

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

Criminal Petition No. 15569 of 2013

Order:

This Criminal Petition is filed by the petitioner/accused, under Section 482 of the Code of Criminal Procedure, 1973, seeking to quash the proceedings pending against him in CC No. 547 of 2013 on the file of IX Additional Chief Metropolitan Magistrate, Hyderabad, for the offence punishable under Section 211 IPC.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor representing the State and perused the material on record.

3. The facts, in brief, are that the petitioner/accused herein filed CC No.13 of 2010 on the file of XVI Additional Judge-cum-XX Additional Chief Metropolitan Magistrate, Hyderabad, against the second respondent herein for the offence punishable under Section 138 of the Negotiable Instruments Act. In that case, the specific defence of the second respondent herein is that the petitioner/accused herein has misutilized certain blank promissory notes, blank signed cheques and blank stamp papers that were given by her for collateral security and thereby cheated her and caused wrongful loss to a tune of more than Rs.50.00 Lakhs and started harassing her by issuing notice for return of the cheque amount alleged to have been issued towards legally enforceable debt. The learned Magistrate, after full fledged trial, has disposed of the said CC No.13 of 2010, by a judgment dated 13.12.2012, finding the second respondent herein not guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and acquitted her. Against the said judgment, it is stated that the petitioner/accused herein has preferred an appeal and the same is pending consideration. While so, the second respondent herein filed

the present case against the petitioner/accused for the offence punishable under Section 211 IPC alleging that the petitioner/accused has fabricated and forged certain documents by misutilizing certain blank cheques and promissory notes given by her for collateral security and filed a false case against her, thereby harassed her, tarnished her reputation and put her under mental agony for no fault of her by maliciously prosecuting her.

4. Even though certain legal aspects were argued on the maintainability of the present case, I do not wish to go into that aspect for the simple reason that as against the judgment in CC No.13 of 2010 the petitioner/accused herein preferred an appeal in Criminal Appeal No.306 of 2013, which is pending on the file of VII Metropolitan Sessions Judge, Hyderabad. Therefore, the finding of acquittal recorded against the second respondent herein has not attained finality. In the circumstances, prosecuting the petitioner/accused herein, who was the complainant in CC No.13 of 2010, for malicious prosecution is a premature one. It is needless to say that as and when the finding recorded in CC No.13 of 2010 has become final, it is always open to the aggrieved person to prosecute the other for whatever offence that may attract.

5. Therefore, without going into the merits of the case, on the ground that the finding recorded in CC No.13 of 2010 has not attained finality, the Criminal Petition is allowed and all further proceedings in CC No.547 of 2013 pending on the file of IX Additional Chief Metropolitan Magistrate, Hyderabad, which is filed against the petitioner/accused for malicious prosecution, are hereby quashed. However, it is made clear that as and when the findings recorded in CC No.13 of 2010 have attained finality; either of the parties to the litigation is at liberty to avail such other remedies that are legally available to them.

6. As a sequel thereto, the miscellaneous applications, if any, pending in the Criminal Petition shall stand closed.

M.S.K. JAISWAL, J.

Date: 08.12.2015

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