THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition Nos.4356 and 4357 of 2014

COMMON ORDER:

Criminal Petition Nos.4356 and 4357 of 2014 are filed by petitioners/ A.1 to A.3 and petitioners/A.4 to A.9 respectively under Section 482 Cr.P.C seeking to quash the proceedings in FIR No.522 of 2013 on the file of Jubilee Hills P.S, Hyderabad.

2) Since both petitions arise out of common question of fact and law, they are disposed of by this common order.

3) The factual matrix of the case is thus:

a) The petitioner/A.1 filed two criminal complaints i.e, C.C.No.232 of 2013 and 273 of 2012 on the file of Additional Metropolitan Magistrate, New Delhi under Sec.138 of N.I. Act against the present *defacto* complainant and its M.D and Directors with the allegations that the *defacto* complainant's company borrowed term loan of Rs.20 Crores from the A.1's company which was sanctioned on 13.03.2008 and as per term loan agreement dated 27.03.2008, the loan was to be repaid within 24 months from the date of disbursal and the borrower in discharge of legal liability for interest and principal issued cheque bearing Nos.275372 for Rs.10 Crores and another cheque bearing No.275374 for Rs.29,53,03,110/- drawn on State Bank of India out of Account No.10287204162 maintained by the *defacto* complainant's company and on presentation of those two cheques for encashment, they were returned unpaid on the ground of insufficient funds on different dates. Inspite of the notices, the *defacto* complainant did not repay the amounts covered by the cheques. Hence the two criminal cases—C.C.No.232 of 2013 in respect of dishonour of cheque bearing No.275372 for Rs.10 Crores and C.C.No.273 of 2012 in respect of dishonour of cheque bearing No.275374 for Rs.29,53,110/-.

b) Be that it may, when the above two criminal cases are pending, the *defacto* complainant who is the accused in the above two cases filed a private complaint before learned XVII Additional Chief Metropolitan Magistrate, at Nampally, Hyderabad against the complainant in the above two cases and his Directors and Secretary for the offences under Sec.403, 405, 406, 463, 464 r/w 120-B IPC with the allegations that the *defacto* complainant's company borrowed an amount of Rs.20 Crores from M/s. Asia Pragati Capfin Private Limited (the complainant in two criminal cases) and at the time of sanction of the loan, the creditor insisted that the *defacto* complainant shall issue blank cheques towards security and accordingly obtained three blank cheques bearing Nos.831983, 831984 and 831985 drawn from the account of the *defacto* complainant. As the *defacto* complainant had no other option, it had to issue the three cheques as a security. It was agreed by the creditor that the cheques were issued as a measure of security and would not be filled up, altered or presented without the specific consent and concurrence of the *defacto* complainant. The further allegations in the complaint are that as the name of creditor company undergone changes during the course of time, the creditor insisted the *defacto* complainant to issue fresh cheques to comply with the Audit requirements and obliged, the *defacto* complainant issued three blank cheques bearing Nos.275372, 275373, 275374 for the second time drawn on its account. The creditor insisted that the *defacto* complainant shall write the name of the creditor as Asia Pragati Capfin Private Limited on the cheques and sign on them and further insisted that he shall not mention the date and the amount in words and figures on the cheques. The *defacto* complainant had agreed to the terms and issued the cheques but at this time also the Directors and officials of the Creditor agreed that the cheques were only a measure of security and would not be filled up, altered or presented without the specific consent and concurrence of the *defacto* complainant.

c) The further case of the *defacto* complainant is that the accused with a *malafide* intention fraudulently forged the cheque bearing No.275372 and inserted an amount of Rs.10 Crores and date 03.11.2011 on the cheque and presented for payment to the bank of the accused. On its return, the creditor issued demand notice dated 18.11.2011 to the *defacto* complainant and he issued reply notice dated 25.11.2011 denying the issuance of the cheque for discharge of the loan. He filed C.C.No.232 of 2013 under Sec.138 of N.I.Act. Not stopped, the accused forged another cheque bearing No.275374 by unauthorisedly inserting an amount of Rs.29,53,03,011/- and presented to the bank of the accused and on its return, issued demand notice and thereafter, instituted C.C.No.273 of 2012 (Old C.C.No.4388 of 2011) against the *defacto* complainant and its former Directors for the offence under Sec.138 of N.I. Act and the *defacto* complainant is contesting the same.

d) Thus it is alleged by the *defacto* complainant that the three cheques each issued on two occasions were as a security towards the loan to fulfill the audit requirements of the accused and instead of keeping them as a security, the accused have dishonestly misappropriated and converted to their own use by forging the date and amount in contravention of the terms of the loan sanctioned letter dated 13.03.2008 and therefore, all the accused are liable for quashment.

Challenging the above criminal proceedings in Crime No.522 of 2013 on the file of Jubilee Hills P.S, Hyderabad, the accused filed these two Criminal Petitions for quashing the FIR.

4) Heard.

5) The submission of learned counsel for petitioners is that admittedly the *defacto* complainant company borrowed Rs.20 Crores from the accused company and when the three out of two cheques issued by it towards discharge of the aforesaid legally enforceable debt were bounced back, the accused company was constrained to file two criminal cases under Sec.138 of N.I.Act and having issued the cheques towards discharge of legally enforceable debt, the *defacto* complainant

as a counter blast lodged a police report with all false allegations as if the cheques were issued only a measure of security but not otherwise. Learned counsel vehemently argued that cheques were issued towards discharge of legally enforceable debt but not as mere security and even assuming for a moment though not admitting that the cheques were issued as a security, still the accused company has a right to press them into service and whether the cheques were issued towards discharge of liability or as mere security has to be decided only during the trial and therefore, the criminal proceedings are not maintainable and amounts to abuse of process of law and hence FIR may be quashed.

6) In oppugnation, learned counsel for *defacto* complainant submitted that on the insistence of the accused at the first instance he issued three cheques in the old name of A.1 i.e, Jwirn Pragati Capfin Private Limited purely as a security and later with the change in the name of A.1's company, on its request he issued three more cheques in the name of Aisa Pragati Capfin Private Limited also as security to fulfill the audit requirement of the A.1 and on both the occasions the accused have represented that the would not tamper with the cheques since the cheques were meant for security only but contrary to the terms, the accused have forged the cheques issued on the second occasion and mentioned amounts and dates and pressed them into service and filed criminal case against the *defacto* complainant and as such, they are liable to prosecuted for which investigation shall be continued to its logical end. He

thus prayed to dismiss the quash petitions.

7) Both sides relied upon several decisions.

8) In the light of above rival arguments, the point for determination is:

"Whether there are merits in these two petitions to allow?"

9) **<u>POINT</u>**: Upon hearing the above arguments and perusal of the record, I find force in the submission of the petitioners. Whether the subject cheques were issued purely as a security with an understanding that the accused company shall not tamper with them and press them into service for filing criminal cases under Sec.138 of N.I.Act or the cheques were issued towards discharge of legally enforceable debt has to be decided only after conducting a full-fledged trial by the concerned trial Court. At this stage, the contention of the *defacto* complainant that the cheques were issued only as a security will serve the purpose as a defence plea in the criminal cases filed under Sec.138 of N.I. Act by the accused. But, even before the trial Court coming to a definite conclusion on the purpose for which the cheques were issued, lodging police report will, in my considered view amount to premature action. Therefore, the continuation of proceedings in Crime No.522 of 2013 on the file of Jubilee Hills P.S, Hyderabad will amount to abuse of process of law at this stage. The *defacto* complainant, if so advised can take appropriate legal action against the accused after the trial Court gave a definite finding on the purpose for which the

cheques were issued by the *defacto* complainant.

10) In the result, Crl.P.Nos.4356 and 4357 of 2014 are allowed and the proceedings in Crime No.522 of 2013 on the file of Jubilee Hills P.S, Hyderabad are hereby quashed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 20.03.2015
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