

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CrI.P.No.762 of 2015

ORDER :

The petitioner is accused in C.C.No.543 of 2013(old No.774 of 2011) on the file of the XIX Special Magistrate, Hyderabad, which is outcome of a private complaint filed by the 1st respondent for the dishonour of cheque punishable under Section 138 of the Negotiable Instruments Act(for short, 'the N.I.Act'). He filed CrI.M.P.No.547 of 2014 under Section 210(1) of Cr.P.C. for stay of proceedings in C.C.No.543 of 2012(cheque dishonour case) after his appearance and before the stage of Section 251 Cr.P.C. examination, alleging that the cheque dishonour case is filed with oblique motive for unjustly to enrich by suppression of material facts and by falsely alleging as if for amount on loan transactions for which the cheque issued and dishonoured misusing a blank cheque and to brow-beat the petitioner from his pursuing legal action against the 1st respondent(complainant of cheque case) in O.S.No.1322 of 2011 on the file of the I Senior Civil Judge, City Civil Court, Hyderabad, and his mother Smt. Chitragada, who obtained decree and judgment against the petitioner herein and his daughter-in-law Smt. Sangeetha, by cheating, forgery, breach of trust and criminal conspiracy etc., and appeal is pending against the decree, that the 1st respondent also illegally kept with him the petitioner's Tata India A/C Diesel Car and enriching therefrom Rs.25,000/- per month, that the petitioner filed private complaint and the learned IX Addl.Chief Metropolitan Magistrate, Hyderabad on 16.10.2013 ordered police to register crime to investigate and consequently FIR in Cr.No.487 of 2013 registered on 29.11.2013 under Section 403,406,420,468,120-B and 43 of IPC, that the 1st respondent's mother is an accused in another Cr.No.138 of 2013 dated 27.10.2013 of Mirchowk Police Station for offences of forgery, cheating and criminal conspiracy etc., that the 1st respondent earlier stayed with his mother at Plot No.144, Sainikpuri, left the address without instructing, that the 1st respondent's mother obtained Rs.9000/- from Sangeeta Upadhyya(respondent/defendant in the civil suit) to get regularization of this illegal construction as can be seen from counter averments in I.A.No.967 of 2011 in O.S.No.1322 of 2011 and hence to call for report of progress on

Cr.No.487 of 2013, by stay of C.C.No.543 of 2013(cheque case) pending investigation of said crime and the same was after contest and hearing by order dated 22.08.2014 ended in dismissal saying in the cheque bounce case, the trial Court is to decide as to any legally enforceable debt or other liability and in Cr.No.487 of 2013 the Station House Officer, Narayanaguda has to file final report, hence, stay of trial in C.C.No.543 of 2013 not necessary, said order when impugned in CrI.R.P.No.357 of 2014, on contest same also on 18.12.2014 ended in dismissal saying after reproduction of Section 210(1) of Cr.P.C., that there is no material before the Court with regard to the registration of crime No.487 of 2013, to appreciate the contention as to C.C.No.543 of 2013 is converted to Cr.No.487 of 2013 and that both have to be tried together.

2 . The quash petition is filed impugning above revision dismissal order confirming trial Court's dismissal order in CrI.M.P.No.547 of 2014 to stay C.C.No.543 of 2013; with the contentions in the quash petition that the revision order is ex-facie illegal and by non-consideration of copy of FIR in Cr.No.487 of 2013 annexed to CrI.M.P.No.547 of 2013, instead saying as if copy of the F.I.R. not filed, which is unwarranted and against the law under Section 210(1) Cr.P.C. hence to set aside the same and pass such other just orders.

3. Heard the petitioner(Advocate) in person and 2nd respondent-State represented by the learned Public Prosecutor and for the 1st respondent left without instructions, service held suffice and taken as heard and perused the material on record.

4 . A perusal of private complaint, referred by Magistrate to Narayanaguda Police Station who registered Cr.No.487 of 2013, is for the offences under Section 403,406,420,468, 120-B and 34 of I.P.c. filed by the accused of Section 138 of the N.I.Act case in C.C.No.543 of 2013, against the complainant and his mother; alleging a decree of arrears of rent etc., fraudulently obtained by mother of the complainant in cheque case. It is to say Section 210(1) Cr.P.C. has no application to the case facts from its wording in private complaint case during trial or enquiry, where appears to the Magistrate that investigation by police is in progress in relation to the offence which is subject matter of enquiry or trial in the private complaint case, the Magistrate can stay the private complaint case. As private complaint case C.C.No.543 of 2013 is for offence

under Section 138 of the N.I.Act and the Cr.No.487 of 2013 is for I.P.C. offences supra are not in relation to the private complaint case offence, Section 210(1) of Cr.P.C. cannot be invoked. Both are not even case and counter case for simultaneous trial to pronounce judgments separately in both the cases on same day and thereby till police file report and taking cognizance, to stay the private complaint case, there are no any grounds.

5. Having regard to the above, the petition is liable to be dismissed for no interference required to sit against the impugned orders.

6. Hence, the Criminal Petition is dismissed. The trial Court in C.C.No.543 of 2013 can proceed with the case by examination of accused under Section 251 of Cr.P.C. and to conduct trial. Consequently, miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

03rd November, 2015.

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