

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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Criminal Petition No.3006 of 2015

Order:

The instant Criminal Petition is filed by the petitioner/A-2 namely Rajkumar Agarwal, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C'), seeking to quash the FIR registered against him in Crime No. 682 of 2014 of PS Saifabad, Hyderabad.

2. The petitioner herein is the second accused. The offences alleged against the petitioner and other three accused are punishable under Sections 420, 406 and 506 IPC. The complaint was filed before the Court and it was referred under Section 156(3) Cr.P.C, basing on the allegations therein, FIR was issued registering it as Crime No.682 of 2014. The partner namely Ashish Agarwal of M/s. Goyal Marketing, shown as respondent No.2 herein, is the complainant who alleged the aforesaid offences against the petitioner herein, arraigning him as A-2, and one Rahul Agarwal as A-1, Ramesh Agarwal as A-3 and Amith Agarwal as A-4 alleging that they issued five cheques bearing (1) Cheque No.000449, dated 31.05.2014, for Rs.98,194/- (2) cheque No.000448, dated 27.05.2014, for Rs.95,336/-, (3) cheque No.000450, dated 05.06.2014, for Rs.1,00,000/-, (4) cheque No.000466, dated 13.06.2014, for Rs.2,32,759/- and (5) cheque No.000262, dated 10.06.2014, for Rs.10,00,000/-, all drawn on HDFC Bank, S.D. Road, Secunderabad, and as per their instructions he presented the said cheques with his bank, A.P. Mahesh Co-operative Bank, Khairatabad Branch, Hyderabad, and the same were dishonoured with an endorsement "payment stopped by the drawer" along with cheque return memos dated 25.07.2014. While reserving his right to initiate proceedings under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the NI Act'), the said complaint was filed alleging the above mentioned allegations with certain other allegations.

3. Heard both sides.

4. Learned counsel for the petitioner has pointed out the partnership deeds between Vimal Kishore Agarwal, Snehalata Agarwal and Ashish Agarwal, so far as the second respondent partnership firm is concerned and, a supplementary deed of partnership between the petitioner herein and one Rahul Agarwal. It is his submission that, as per clause 5 of the supplementary deed of partnership, the other partner - Rahul Agarwal alone was the sole managing partner of the firm who has agreed to conduct all business affairs of the partnership firm as working partner thereof exclusively to the greatest common advantage and, basing on the said clause, it is his submission that the petitioner has nothing to do with the issuance of cheques and, therefore, there is no material to connect the petitioner with his alleged complicity in the commission of offences alleged against him. Learned counsel has also placed copy of the order passed by this Court in CrI.P. No.1456 of 2015 in the very same crime on the petition filed by Accused Nos.3 and 4 requesting to quash FIR under Section 482 Cr.P.C. This Court, by an order dated 10.03.2015, refused to quash it, but however, directed the police of Saifabad Police Station, Hyderabad, not to arrest the petitioners therein, who are A-3 and A-4 in the very same crime.

5. In such an event, since the name of the petitioner also occurring in the FIR and the effect of clause 5 of the supplementary deed of partnership, it is to be held that there is material, *prima facie*, sufficient to investigate the allegations occurring in the FIR. Since in other Criminal Petition No.1456 of 2015, the concerned investigating agency has been directed not to arrest A-3 and A-4, the petitioner cannot be discriminated and, therefore, the Police Saifabad Police Station, Hyderabad, are directed not to arrest the petitioner/A-2 herein, but however, the investigation shall continue to its logical end and the petitioner shall co-operate with the investigating agency for smooth completion of the investigation.

6. Accordingly, the Criminal Petition is disposed of.

7. As a sequel thereto, the miscellaneous applications, if any, pending in the

Criminal Petition shall stand closed.

A. SHANKAR NARAYANA, J

Date: 16.04.2015

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