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

Criminal Petition No.846 of 2011

ORDER:-

The petition is filed under Section 482 Cr.P.C., by the petitioner/accused to quash all further proceedings in C.C.No.166 of 2009 on the file of the IX-Metropolitan Magistrate, Cyberabad at Kukatpally.

2. The 1st respondent is the *de facto* complainant. For the sake of clarity, the parties shall be referred to as the complainant and the accused.

3. The complainant filed a private complaint alleging offences punishable under Sections 405, 406, 420, 383, 422 and 423 I.P.C., and the same was referred to the police for investigation under Section 156 (3) Cr.P.C. After investigation, charge-sheet is laid. The accused is sought to be prosecuted on the ground that the investigation has established that the complainant and the accused are known to each other, that the accused is the successful bidder for the canteen service in Indu Project at KPHB Area having considerable experience in running the canteens under the name and style of M/s.Saptagiri Hospitality Service. The accused approached the complainant and requested him to join with him in the business with an investment of Rs.1,00,000/- and the accused agreed that he will pay Rs.20,000/- every month towards goodwill to the complainant with effect from 01-07-2007 till the invested amount of Rs.1,00,000/- is fully repaid and thereafter the accused will pay Rs.15,000/- to the complainant every month till the canteen carries on its service in M/s.Srini Pharmaceuticals Limited, Choutuppal and accordingly, an MOU was entered into on 04-07-207 and there was also another MOU dated 21-06-2007 for an amount of Rs.76,000/-, for which the accused agreed to give a monthly goodwill amount of Rs.15,000/- per month w.e.f., 01-06-2007 and both of them had successfully did the business. It is further alleged that due to unavoidable circumstances, the business was

closed and thereafter the accused issued two cheques for Rs.1,00,000/- each dated 04-10-2007 and 02-10-2007 and when the cheques were presented, they were dishonoured *for want of sufficient funds*. Thereafter, when the complainant asked the accused for the entire amounts due and payable, the accused executed a promissory note on 06-02-2008 in favour of the complainant and also agreed that he will pay the said amount shortly. Alleging that the accused dishonestly issued false promissory note and cheques, with an breach of trust and fraudulently to avoid paying the debt and thereby cheated the complainant and hence the charges.

4. Learned Counsel appearing for the petitioner/accused submits that a plain reading of the complaint and the contents of the charge-sheet clearly show that no ingredients, whatsoever, of the offences alleged have been made out for the two cheques, which are said to have been issued by the accused to the complainant and even though they were dishonoured, no proceedings, whatsoever, are initiated under the provisions of Section 138 of the Negotiable Instruments Act. Further more, the accused is also said to have executed a promissory note on 06-02-2008 but no steps whatsoever are taken to proceed on its basis. Only with an oblique intention to harass the accused, the complainant took recourse the criminal prosecution and filed a private complaint on 24-09-2008 alleging that the accused has committed the offences stated supra. Learned Counsel further submits that the relationship in between the complainant and the accused was fiduciary in nature and both of them did the business and after the business was closed, the amount that was found to be payable to the complainant, cheques were issued and promissory note was executed and even if these allegations are true, they do not amount to the offences alleged. The learned Counsel further submits that continuation of the criminal proceedings against the accused clearly amounts to the abuse of process of Court and hence the same is liable to be quashed.

5. In support of his contention, learned Counsel appearing for the petitioner/accused relied upon a decision of the Supreme Court reported in **VIR PRAKASH SHARMA v. ANIL KUMAR AGARWAL**[1]**.** The facts before the Apex Court were similar to the facts of the case in hand. In the case before the Apex Court, the parties entered into a contract for sale and purchase of welding rods, that the appellant did not pay some amount due, and he issued two cheques which were dishonoured and thereafter the appellant was sought to be prosecuted for the offences punishable under Sections 405, 406, 409, 415, 420 and 417 I.P.C., for which purpose, criminal case was registered. The Apex Court, after referring to the provisions of the Indian Penal Code, quashed the taking of the cognizance for the offences. The relevant observations of the Apex Court are contained in paras 7, 9, 10 and 15 and they may be reproduced:-

> "7. The principle underlying exercise of jurisdiction by the High Court under Section 482 of the Code of Criminal Procedure is now well settled viz., that the allegations contained in the complaint petition even if given face value and taken to be correct in its entirety do not disclose an offence or not is the question.
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> 9. Ordinarily, bouncing of a cheque constitutes an offence under Section 138 of the Negotiable Instruments Act. No complaint thereunder had been taken.
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> 10. We are, therefore, left only with the question as to whether in a situation of this nature any offence of cheating can be said to have been made out.
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> 15. In law, only because he had issued cheques which were dishonoured, the same by itself would not mean that he had cheated the complainant. Assuming that such a statement had been made, the same, in our opinion, does not exhibit that there had been any intention on the part of the appellant herein to commit an offence under Section 417 of the Penal Code."

6. Applying the aforesaid decision of the Supreme Court to the facts of the present case, it is noticed that in the instant case also only because the '2' cheques issued by the accused are alleged to have been dishonoured, the accused is sought to be prosecuted for the

offences punishable under the Indian Penal Code.

7. A *prima facie* reading of the allegations contained in the charge-sheet based on the complaint do not show that the accused had any intention or had a guilty mind for cheating the complainant nor he had any fraudulent or dishonest intention at the time when he issued the cheques. There are also no ingredients of there being any deception on the part of the complainant in parting with any consideration or property. Both the complainant and the accused have voluntarily entered into a business which was like a partnership business and entered into MOUs and did the business for sometime.

8. Taking into consideration the above facts and circumstances, it is held that continuation of criminal proceedings against the accused is clearly amounts to abuse of the criminal process and the dispute, if any, in between them is essentially a civil dispute and even if the contents of the charge-sheet are taken to be correct, in its entirety, it do not disclose commission of any offence.

9. In the result, the Criminal Petition is allowed and the proceedings initiated against the petitioner/accused in C.C.No.166of 2009 on the file of the IX-Metropolitan Magistrate, Cyberabad at Kukatpally, are hereby quashed.

Miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

M.S.K.Jaiswal, J

June, 2015
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[1] (2007) 7 SCC 373