

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.4507 of 2014

ORDER :

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the Petitioners-A.1 and A.2 to quash the proceedings in C.C.No.733 of 2013 on the file of the IV Metropolitan Magistrate, Cyberabad, Ranga Reddy district outcome of the private complaint of the 2nd respondent-defacto-complainant, taken cognizance for the offences punishable under Section 138 read with 142 of the Negotiable Instruments Act (for short, 'the Act') after sworn statement, which disclose that the complainant and accused persons are residents of Ibrahimpatnam and also agnates with the same surname and are joint owners and possessors of land to the extent of Ac.2-00guntas of khalsa, Ibrahimpatnam village in Sy.No.257/64/(66), whereas the only names of accused persons recorded in revenue records for the said land, that the Government acquired the same with other lands for A.P.I.I.C. only mentioning the names of accused persons as owners and complainant requested both the accused for partition and separate possession and to provide his share of amount for which when they refused in order to get total compensation by them, the complainant filed suit for partition against the accused persons 1 and 2 in O.S.No.782 of 2011 before the II Addl.Senior Civil Judge, Ranga Reddy at L.B.Nagar, and at the instance of the elders they settled the dispute in the suit wherein both the accused agreed to pay Rs.1,95,000/- to the complainant towards his share of amount for the said land and a memorandum of understanding dated 25.10.2011 executed between them as per which the A.1 B. Shoban Babu issued a cheque in favour of the complainant bearing No.102963 for Rs.97,500/- drawn on State Bank of India, Ibrahimpatnam out of Rs.1,95,000/- and similarly for remaining equal half balance, 2nd accused B.Rambabu issued a cheque bearing No. 088986 drawn on the Andhra Bank, Ibrahimpatnam, and after settlement, the complainant withdrawn partition suit with no objection for defendants therein-the petitioners herein for withdrawal of the land acquisition compensation and later when the complainant presented both the cheques being the payee for collection, same were returned dishonoured for the 'funds insufficient' and 'dormant account' respectively on 08.05.2013 from which he issued statutory notice to the accused persons respectively and that thereby for non-payment despite notice, the accused are liable for prosecution and the documents filed are 8 in number including two

original cheques supra and cheque return memos, office copy of legal notice issued to them with postal receipts dated 20.05.2013, acknowledgments(2 in number) of notices received and original counterfoils (2 in number) and the memorandum of understanding dated 28.05.2011.

2. The contentions in the petition that they got half share in the land admeasuring Ac.2-00guntas out of the land admeasuring Ac.4-00 in Sy.No.257/64(66) towards their share, that the government did not deposit the land acquisition compensation amount nor issued any cheques in favour of the accused persons being beneficiaries to receive the compensation for honouring two cheques pursuant to the memorandum of understanding dated 28.05.2011 as the cheques given were by mentioning the names without given dates, to be honoured only after compensation received from the Government and it shows the complainant cause filled the dates by manipulation of the cheques in its presentation by misuse of blank cheques which is nothing but fraud and even the MOU did not mention dates of the cheques but for cheques are clear of subsequent manipulation by the complainant and there is no prima facie case for maintaining the cheque bouncing transaction for the learned Magistrate to take cognizance of the offence and the proceedings are nothing but abuse of process, that earlier to the memorandum of understanding dt.28.05.2011 there was another Memorandum of Understanding executed between wherein under clause No.3 the complainant herein agreed to receive Ac.1-00 land out of Ac.3.24guntas and S.No.58/111 of Bhagayath, Ibrahimpatnam village to the petitioners herein towards their share or if in case the schedule property proposed to acquire by the Government, the complainant agreed to provide compensation amount in respect of land admeasuring AC.1-00guntas in sy.No.58/111 which was suppressed by the complainant, hence the petition.

3. Heard both sides and perused the material on record.

4. From the above, the accused persons admit the cheques routed from their account and bear their signatures but for to say they did not put the dates but for mentioned the name of the complainant. The Memorandum of understanding dated 23.05.2011 of Rs.100/- stamp paper running in three pages and another 100 stamp paper running in 4 pages to which the complainant and the accused are parties are the documents placed reliance in quash petition by the accused persons. The first one dated 23.05.2011 shows that any disputes arose between the parties in relation to Ac.3.24guntas of land in Sy.No.58/111 of Ibrahimpatnam and to avoid future

litigations at the instance of well wishers and elders, the matter will be settled, as per the settlement the complainant agreed to provide Ac.1-00 out of Ac.3-24guntas in Sy.No.58/111 to the accused persons herein towards their share or in case annexed schedule property supra proposed for acquisition by the government, to pay compensation amount for that

Ac.1-00 and in case the complainant fails to give the said extent, the aggrieved party can approach the concerned authorities for their redressal and also for compensation. It is pursuant to which the second memorandum dated 28.05.2011 between them particularly clause 4 and whereunder the first memorandum not form part or find place but for in relation to land viz; Ac.2.00guntas in Sy.No.257/64(66) kalsa, Ibrahimpatnam wherein in saying the Government proposed for acquisition of the land for APIIC and notified the proposed acquisition and first party-complainant requested the 2nd party-accused persons for partition and separate possession which they refused from which he filed O.S.No.782 of 2011 which is pending and the elders and well wishers settled the matter as per which 2nd party accused persons agreed to provide 1,95,000/- to the first party(complainant) towards his share in respect of the land and for that the accused persons 1 and 2 of the 2nd party issued the two cheques supra in favour of the complainant and as per the settlements the 1st party/complainant agreed to withdraw suit against the 2nd party/ accused persons and if the 2nd party/accused persons failed to give said settlement amount to the 1st party, the first party would approach the authorities for redressal and for compensation.

5. In fact, a perusal of the said two memorandums is crystal clear of first one is nothing to do with second one and thereby the non-mentioning of the first one in the complaint is not suppression of material fact and nothing therefrom of any abuse of process of law or approaching with unclean hands. The clause No.4 of the memorandum, dated 28.05.2011 admittedly executed by the accused persons in favour of the complainant with 8 clauses speaks the two cheques issued from the respective accounts of the accused persons 1 and 2 in favour of the complainant for respective amounts agreeing to pay amounts for settlement of the civil dispute for partition towards the share of the complainant in the compensation for property acquired by the Government. There is a mention that if the accused persons failed to pay the amount to the complainant as per the settlement, the complainant can approach the authorities for redressal and for compensation. It is crystal clear from

the MOU dated 28.05.2011 coupled with the quash petition averments that the accused issued the cheques in favour of the complainant to honour the cheques for the legally enforceable debt or other liability which is towards compensation amount due to the complainant of the acquired land wherein along with accused/complainant also got share as a part of withdrawal of the suit for partition maintained by the complainant against them for partition. The version that the cheques are blank is not found place in the said MOU in any of the clauses. There is nothing even to say the cheques to be presented only after the particular date. It is very clear of in the event of non-payment, remedies left open to the payee(complainant) thereby there are no grounds for the accused to seek for the quash of criminal case proceedings for dishonour of the cheques.

6. Accordingly, the Criminal Petition is dismissed. Consequently, miscellaneous petitions, if any pending, in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:29.10.2015

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