

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL PETITION Nos.4793 AND 4794 OF 2014

COMMON ORDER:

These criminal petitions are arising out of the business transactions between the petitioners and the respondents in both the criminal petitions and parties in both the criminal petitions are common and as such, the criminal petitions are being disposed of by this common order.

The criminal petition Nos.4793 of 2014 and 4794 of 2014 are filed under Section 482 of Code of Criminal Procedure (Cr.P.C.) to quash Section 251 CrPC proceedings, dated 28.11.2013, in C.C.Nos.57 of 2013 and 56 of 2013 respectively on the file of the III Special Magistrate, Erramanzil, Hyderabad.

Heard and perused the material available on record.

Learned counsel for the petitioners submits that the Court below while examining the petitioners under Section 251 CrPC., instead of putting the substance of the accusation, questioned them in a detailed manner asking questions in respect of all the contents of the complaint, which is impermissible under Section 251 CrPC. In this context, he relied on the Judgment of the Supreme Court in **Bharat K.Gupta v Arun Kumar (2001 SCC (Cri) 1517)**. Hence, he prays this Court to quash Section 251 CrPC., proceedings against the petitioners herein before the Court below.

This Court is of the view that as per Section 251 CrPC., when the accused appears, the substance of the accusation should be read over to him and should be asked whether he pleads guilty or has any defence. It does not mean that the Magistrate shall not ask the questions elaborately by invoking Section 251 CrPC.

The Judgment of the Hon'ble Supreme Court, which is relied on by the learned counsel for the petitioners, is arising of an Order passed by the High Court, whereby the High Court quashed the proceedings against the petitioner therein observing that the Magistrate has not recorded that the petitioner therein alone was responsible to or in charge of the firm for conduct of the business so as to attract the provisions of Section 141 of the Negotiable Instruments Act. The Hon'ble Supreme Court set aside the Order of the High

Court and held that while complying with Section 251 CrPC, the Magistrate is required to incorporate the substance of the accusation and not the details as appearing in the complaint. The said Judgment conveyed the meaning that it is not necessary to question the accused stating each and every aspect of the accusation. It does not mean that questioning the accused in an elaborate manner by invoking Section 251 CrPC is impermissible in law. Hence, this Court is not inclined to interfere with the Orders passed by the Court below by invoking Section 251 CrPC., and that the same are in accordance with law. Hence, the Criminal Petitions fail and are accordingly dismissed.

At this stage, learned counsel for the petitioners submits that Non Bailable Warrants (NBWs) are issued against the petitioners. He further submits that the absence of the petitioners herein before the Court below is neither wilful nor wanton. Hence, the learned counsel prays this Court to recall the NBWs issued against the petitioners.

The petitioners are directed to appear before the Court below and file an application for recalling NBWs issued against them, and on filing of such application, the Court below is directed to recall the NBWs issued against the petitioners on the same day on condition of each of them executing a personal bond for a sum of Rs.10,000/- (Rupees ten thousand only) with one surety for the like sum to the satisfaction of the said Magistrate. The Court below is directed to conclude the trial as early as possible, preferably within a period of six months.

The criminal petitions are accordingly dismissed. Consequently, miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE RAJA ELANGO

07.04.2016

pln