THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION No.12866 OF 2015

ORDER:

This Criminal Petition is filed by the accused 1 to 3 under Section 482 of Cr.P.C. seeking to quash the proceedings in C.C.No.213 of 2015 pending on the file of XI Special Magistrate, Erramanzil, Hyderabad for the offence under Section 138 of Negotiable Instruments Act.

The case of the complainant is that during the course of business, it entered into a contractual agreement with the accused for supply of Pet Coke Firing System on 8.3.2014 for an amount of Rs.7,62,00,000/- and as per the terms and conditions and minutes of meeting, 55% value of the amount has to be paid against the dispatch of documents for door delivery against the consignee copy and the remaining 30% will be released prior to dispatch of the last supply from the complainant. In connection with the said transaction, two post-dated cheques were issued. The cheque dated 30.9.2014 was returned to the accused as the amount covered by the said cheque was transferred by way of RTGS. The second cheque bearing No.347179 dated 17.10.2014 for an amount of Rs.76,20,000/- was returned unpaid by the Indian Bank, New Delhi with remark "Referred to Drawer and Payment Stopped by Drawer". Statutory notice was issued to the accused on 12.12.2014 and the accused issued a false reply. Hence, the complaint.

The facts, as narrated by the petitioners herein are that the first petitioner placed purchase order as per terms and conditions for supply of Pet Coke Firing System on the complainant on 08.03.2014 for an amount of Rs.7,62,00,000/-. Subsequently, deliberations took place and the Minutes of Meeting ('MOM') were drawn on 14.06.2014 by and between the representatives of the complainant and the first petitioner-A.1. As per the said MOM, 55% value has to be paid against the dispatch of documents for door delivery against the consignee copy. The PDC (Post Dated Cheque) for remaining 30% will be released prior to dispatch of the last supply from the complainant apart from other conditions. Accordingly, on 08.07.2014 the first petitioner issued amendment in payment terms of purchase order dated 18.03.2014 duly mentioning the above conditions. The amendment of purchase order was also marked as document No.5 in the complaint itself. However, the award of contract for installation of Pet Coke Grinding and Firing System was not completed though the payments were made as per payment schedule. On completion of the entire installation and completion of supplied Firing System, the payments were made to the complainant through RTGS as per understanding on return of post-dated cheques given to the complainant as security. But since the installation of burner was not properly done, on 27.10.2014 the first petitioner informed the complainant about the serious issues with the burners supplied by the complainant. However, the complainant sought permission of the first petitioner to deposit cheque of

10% value against erection vide e-mail dated 6.10.2014 and the first petitioner refused permission to deposit the cheque as the contract has not reached the stage of start up of Pet Coke Grinding and Firing System vide mail dated 6.10.2014. Thereafter on 01.11.2014 the first petitioner informed the complainant through mail not to present security cheque bearing No.347179 amounting to Rs.76,20,000/- as the complainant has not discharged its obligation. In spite of that, the complainant presented the said cheque with its branch on 04.12.2014. In response to the statutory notice, the petitioners in their reply informed that the complainant is not entitled for an amount of Rs.76,20,000/- and therefore, payment was stopped though sufficient funds were maintained in the account.

It is an admitted fact that the post-dated cheque for an amount of Rs.76,20,000/-, which constitutes 10% of purchase value was given as security and it is agreed in the joint meeting held on 7.9.2014 that the certification has to be taken by the complainant from the first petitioner and the post-dated cheque dated 17.10.2014 is to be deposited on commissioning of system and start up and the certification have to be given by the first petitioner company. From the minutes of the subsequent joint meetings held on 20.10.2014 and 29.10.2014 it is clear that the commissioning and start up were not completed and there were serious problems in starting the equipment supplied by the complainant and therefore, according to the petitioners, the amount covered by the cheque in question, which was given by way of post-dated cheque is not due and payable to the complainant and that the complainant has no right to deposit the cheque without obtaining the certification from the first petitioner company.

Heard and perused the material available on record.

In order to substantiate the contentions of the petitioners, learned counsel for the petitioners relied on the documents i.e. (1) purchase order dated 18.3.2014; (2) Minutes of meeting dated 14.6.2014; (3) amendment purchase order dated 8.7.2014; (4) minutes of meeting dated 7.9.2014; (5) minutes of meeting dated 20.10.2014; (6) minutes of meeting dated 29.10.2014; (7) e-mail dated 29.10.2014; (8) e-mail dated 27.10.2014; (9) e-mail dated 6.10.2014; (10) e-mail dated 1.11.2014; (11) termination notice dated 11.11.2014; (12) notice issued by the complainant dated 11.12.2014; (13) reply notice issued by petitioners dated 24.12.2014; (14) agreement between the parties; & (15) resolution dated 12.6.2014.

The complainant-second respondent herein has not filed any counter before this Court. As rightly pointed out by the learned counsel for the petitioners, one of the understandings entered between the parties in the minutes of meetings dated 7.9.2014 runs as follows:

> "....2) M/s Gold Plus asked M/s Sanghavi to collect 2 no.PDC's on 08.09.2014, as per last MOM & M/s. Sanghavi to arrange dispatch of PLC and MCC panel shall get dispatched from Mumbai on 9th/10th September (Mumbai Vehicle availability might take one day more due to ganesh)

a) First PDC value of Rs.76,20,000/- dated 30th September 14 which is to be deposited on erection of equipment. (Certification to be taken by Sanghavi from Gold Plus site for completion of erection of equipments.)

b) Second PDC value of Rs.76,20,000/- dated 17th October 14 which is to be deposited on commissioning of system & start up. (certification to be taken by Sanghavi from Gold Plus.)
(if by submitting the relevant documents to bank of M/s Gold Plus if their bank is to arrange payment to M/s Sanghavi, M/s Gold Plus will give instruction accordingly to Sanghavi in time.)
3) M/s. Gold Plus shall handover their PDC of Rs.76,20,000/- dated 17th November 14 to M/s. Sanghavi after commissioning. (As per term, this cheque is to be deposited after one month of commissioning.)....”

It is evident from the record placed by the petitioners that at the time of issuance of cheque in question by the petitioners, there is no enforceable debt or liability in favour of the complainant. It is also the specific case of the petitioners that the cheque should be deposited only after commissioning of the machinery that too after obtaining the certification from the petitioners.

The learned counsel for the petitioners relied on the decision of the Apex Court in **Indus Airways Private Limited v. Magnum Aviation Private Limited and another** {(2014) 12 SCC 539}. The said decision is squarely applicable to the facts and circumstances of the present case. In view of the above, this Court is of the view that the cheque in question is given by the petitioners in advance prior to any existing debt or other liability in favour of the complainant. Hence, this Court is of the view that allowing the impugned proceedings to continue against the petitioners is abuse of process of law and are liable to be quashed.

In the result, the Criminal Petition is allowed and the proceedings in C.C.No.213 of 2015 pending on the file of XI Special Magistrate, Erramanzil, Hyderabad are hereby quashed as against the petitioners herein.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE RAJA ELANGO

09.09.2016
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HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते