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

CRIMINAL PETITIONS Nos.145/2012, 11357, 12586 & 12656 OF 2011

COMMON ORDER:

All these criminal petitions are filed by the same petitioner/accused. Since in all these criminal petitions involve common facts and common question of law, they are disposed of by this common order.

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

3. Before going into the merits of the case, it is necessary to refer to the background of the case in nutshell.

4. The petitioner/accused and his family members executed an agreement of sale dated 12.10.2006 in favour of the complainants in all these four petitions and two others, viz., (1) G.Anand Reddy, (2) N.Lakshman Rao, (3) V.B.Pankaj Raj, (4) I.Ravinder Reddy, (5) B.V.R.Prasad and (6) B.Ashok Kumar in respect of the land admeasuring Ac.13.16 guntas in Sy.No.307 of Bachupally village for total consideration of Rs.3,75,00,000/- and received Rs.3 crores on different dates. According to the petitioner/accused, himself and his family members put forth real facts before the complainants entering into the agreement of sale stating that the lands in question were in occupation of protected tenants who were wrongly issued certificates under Section 38-A of A.P.Telangana Area Tenancy and Agricultural Lands Act, 1950, for which, the complainants agreed and undertook that they would clear all hurdles for registration of sale deed. According to the complainants, the petitioner/accused and his family members cheated them and failed to furnish the link documents and after enquiry they came to know that the petitioner/accused and his family members do not have any piece of land or alternate land in Sy.No.307 of Bachupally village. When the petitioner/accused was

questioned, himself and his family members agreed to return the amount of Rs.3 crores. The father of the petitioner/accused Sri Akram Ali Khan paid an amount of Rs.1.09 crores in cash and the petitioner/accused gave cheques for the remaining amount, out of which 4 cheques, according to the complainants, were dishonoured.

5. The case of the petitioner/accused is that having agreed to the terms and conditions as enunciated in the agreement of sale, the complainants entered into the agreement and paid the amount. Having failed to clear the hurdles from the Government agencies, as agreed by the complainants in the agreement of sale, the complainants pressurized the petitioner/accused and his family members through a Minister of ruling Government for return of money and threatened the petitioner/accused and his family members. Though the petitioner/accused and his family members are not legally bound to repay the amount received as per terms of the agreement of sale, but at the instance of the Minister of the ruling Government, the father of the petitioner/accused agreed to return the amount received and returned a sum of Rs.1.09 crores in cash and the last payment of Rs.8 lakhs in cash was paid on 16.12.2008. The petitioner/accused for himself and on behalf of other family members issued the following 8 cheques to the complainants for the remaining balance amount;

Sl. No.	Date	Cheque No.	Amount Rs.
1.	28.07.2008	109325	5 lakhs
2.	28.07.2008	109323	20 lakhs
3.	10.08.2008	109321	50 lakhs
4.	31.08.2008	109326	25 lakhs
5.	30.09.2008	109324	50 lakhs
6.	31.10.2008	109327	50 lakhs
7.	30.11.2008	109328	50 lakhs
8.	31.12.2008	109322	50 lakhs

The petitioner/accused requested the complainants that he needs time to make the payment under the said cheques. But the complainants presented four cheques out of 8 cheques, which were dishonoured.

6. The 2nd respondent/complainant-I.Ravinder Reddy in Crl.P.No.145/2012 filed C.C.No.2308/2010 against the petitioner/accused under section 138 of Negotiable Instruments Act in respect of dishonour of cheque bearing No.109323, dated 30.11.2008 for Rs.50 lakhs on the file of the XIV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.

7. The 2nd respondent/complainant-G.Anand Reddy in Crl.P.No.11357/2011 filed C.C.No.59/2010 against the petitioner/accused under section 138 of Negotiable Instruments Act in respect of dishonour of cheque bearing No.109322, dated 31.12.2008 for Rs.50 lakhs on the file of the VIII Metropolitan Magisdtrate, Cyberabad at Rajendranagar.

8. The 2nd respondent/complainant-N.Lakshman Rao in Crl.P.No.12656/2011 filed C.C.No.699/2009 against the petitioner/accused under section 138 of Negotiable Instruments Act in respect of dishonour of cheque bearing No.109327, dated 31.10.2008 for Rs.50 lakhs on the file of the IX Metropolitan Magistrate, Miyapur, Ranga Reddy District.

9. The 2nd respondent/complainant-V.B.Pankaj Raj in Crl.P.No.12586/2011 filed C.C.No.247/2010 against the petitioner/accused under section 138 of Negotiable Instruments Act in respect of dishonour of cheque bearing No.109324, dated 30.09.2008 for Rs.50 lakhs on the file of the III Additional Chief Metropolitan Magistrate at Hyderabad.

10. Seeking to quash all these proceedings, the petitioner/accused filed these four criminal petitions.

11. The petitioner is the respondent/accused in different cases which all arise out of same transaction, viz., issuance of cheques to four different complainants which have been dishonoured giving rise to the private complaints by the complainants under Section 138 of the N.I.Act. The petitioner in all these petitions seeks quashing of the criminal cases on the ground that the essential ingredients which constitute an offence punishable under Section 138 of the N.I.Act are not made out since the cheques in question were not issued in discharge of an existing liability and that they were issued in favour of the complainants under tremendous pressure from a Minister in the then Ruling Government. It is further the contention of the petitioner that the dispute if any is purely civil in nature and as a matter of fact, the complainants already filed civil suits for recovery of the amounts covered by the cheques in question and therefore continuing the criminal prosecution is nothing but abuse of process of law and hence they are liable to be quashed.

12. The facts that are either admitted or are not controverted are that the petitioner claiming himself to be the owner and possessor of vast extents of lands in pursuance to a family settlement of 1992 and for meeting pressing financial needs, has entered into an agreement of sale with the de facto complainants on 12-10-2006 agreeing to sell an extent of Ac.13-16 gts., of land in Sy.No.307, Bachupally village, for a total consideration of Rs.3.75 crores. The complainants in all paid Rs.3 crores to the petitioner/accused. As per the agreement of sale, the responsibility was on the *de facto* complainants/agreement holders to clear all such disputes before the registration of the sale deeds. The agreement further provided that the *de facto* complainants/agreement holders have agreed to take whole responsibility to incur all expenses and title (sic), the required documents to the concerned authorities for getting the above said land. It further provided that if the agreement holders did not pay the

balance amount (sic) with the above said time, the agreement of sale is null and void and the amount paid by the agreement-holders shall not be refunded and the said agreement shall stand cancelled. The dispute in respect of the said land was in respect of the land being in possession of protected tenants. However, the transaction could not be finalized and it is claimed by the complainants that the said agreement was cancelled, though such a cancellation deed has not been produced. The fact remains that there is no dispute about the agreement being cancelled and even though the petitioner/accused is not legally bound to return the amount of Rs.3 crores which he has received in pursuance to the agreement of sale but in order to buy peace and overcome threats, he paid Rs.1.09 crores to the *de facto* complainants and agreed to pay the balance amount in future and under pressure, issued '8' cheques covering the balance amount, out of which four cheques were presented, which ultimately were dishonoured on being presented.

13. It is also on record that even before the cheques were presented and the complainants issued the statutory notices, on behalf of the accused a legal notice was issued setting out all the facts on 24-01-2009 calling upon the *de facto* complainants to return Rs.1.09 crores which they illegally, forcefully and by criminal intimidation collected from them and also return eight cheques which the *de facto* complainants obtained from the petitioner/accused. Reply notices were sent to the notices and subsequently, the cheques came to be presented.

14. The main contention of the petitioner/accused is that there was no legally enforceable debt as on the date when the cheques were issued and hence the offence under Section 138 of the N.I.Act cannot be said to have attracted. Even though, they were not legally bound to return the advance of Rs.3 crores which they received under certain compelling circumstances, they returned Rs.1.09 crores and

also issued the cheques. According to the learned Counsel, the remedy, if any, that is available to the *de facto* complainants is to approach the civil forum, which, in fact, they did and even failed to obtain any favourable order under the provisions of Order XXXVIII C.P.C., seeking attachment of properties before Judgment.

15. Learned Counsel appearing for the respondents submits that the petitioner has approached the High Court under the provisions of Section 482 Cr.P.C., the scope and amplitude of which is well settled. In order to succeed in getting a criminal prosecution quashed at the threshold, it is incumbent on the part of the petitioner to show that a *prima facie* reading of the FIR/Private Complaint/Charge sheet do not make out an offence so as to call upon the accused to face the prosecution. The truthfulness or otherwise of the allegations of the complaint and the evidence proposed to be placed on record cannot meticulously be scanned even before the trial in a criminal case commences. Learned Counsel further submits that while considering the petition under Section 482 Cr.P.C., the High Court cannot dwelve at length and in depth for determining as to whether the allegations *per se* are sufficient to giving rise to a grave presumption or grave suspicion, which may result in their conviction.

16. In support of the contention, learned Counsel appearing for the respondents relied upon certain authorities of the Supreme Court, which laid down the well settled proposition of law insofar considering the petitions under Section 428 Cr.P.C., are concerned. A three Judge Bench of the Supreme Court in **STATE OF HARYANA AND OTHERS v. BHAJAN LAL AND OTHERS**[1] has summarized the legal position by laying down the following guidelines by High Courts in exercise of their inherent powers to quash a criminal complaint:

> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence

or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In **PADAL VENKATA RAMA REDDY v. KOVVURI SATYANARAYANA REDDY**[2] dealing with the powers of the High Court under Section 482 Cr.P.C., made the following observations in paras No.6, 9 and 10:-

"6. Section 482 of the Code deals with inherent power of High Court. It is under Chapter XXXVII of the Code titled "Miscellaneous" which reads as under:-

"482. *Saving of inherent power of High Court:- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court* *to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

This Section was added by the Code of Criminal Procedure (Amendment) Act of 1923 as the High Courts were unable to render complete justice even if in a given case the illegality was palpable and apparent. This Section envisages three circumstances in which the inherent jurisdiction may be exercised, namely:

1. to give effect to any order under Cr.P.C.
2. to prevent abuse of the process of any Court,
3. to secure the ends of justice.

9. In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of two Courts below. Inherent powers under Section 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any Court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any Court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However such inherent powers are to be exercised sparingly, carefully and with caution.

10. It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide *Kavita V. State (2000 Cri.L.J., 315 AND b.s.Joshi v. State of Haryana and another (2003 (1) ALD (CRL) 842 (SC) = 2003 (4) SCC 675 = AIR 2003 SC 1386 = 2003 AIR SCW 1824)*. If an effective alternative remedy is available, the High Court will not exercise its powers under this Section, specially when the applicant may not have availed of that remedy."

After referring to the various authorities on the subject, the Supreme

Court in ***Padala Venkata Rama Reddy's case (referred*** **2nd supra)** laid down as under in para 24:-

> "… … When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. The scope of exercise of power under Section 482 and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure in Bhajan Lal's case (AIR 1992 SC 604). The powers possessed by the High Court under Section 482 are very wide and at the same time the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. It would not be proper for the High Court to analyse the case of the complainant in the light of all the probabilities in order to determine whether conviction would be sustainable and on such premise arriving at a conclusion that the proceedings are to be quashed. In a proceeding instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case in which complaint does not disclose any offence or is frivolous, vexatious or oppressive. There is no need to analyse each and every aspect meticulously before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. The statement of witnesses made on oath to be verified in full and materials put forth in the charge sheet ought to be taken note of as a whole before arriving any conclusion. It is the material concluded during the investigation and evidence led in Court which decides the fate of the accused persons."

In **MOSIRUDDIN MUNSHI v. MOHD.SIRAJ**[3] the Supreme Court observed in paras 8 and 10 as under:-

> "In the present case the complaint does not make averments so as to infer fraudulent or dishonest inducement having been made by respondent 1 herein and accused 2 pursuant to which the appellant parted with money. It is the case of the appellant that respondent 2 does not have title over the property since the settlement deed was not a registered one and respondent 1 herein and ad 2 had entered

into criminal conspiracy and they fraudulently induced the appellant to deliver a sum of Rs.5,00,001 with no intention to complete the sale deal. The averments in the complaint would prima facie make out a case for investigation by the authority.

The High Court has adopted a strictly hypertechnical approach and such an endeavour may be justified during a trial, but certainly not during the stage of investigation. At any rate it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a civil transaction wherein no semblance of criminal offence is involved."

In **N.SOUNDARAM v. P.K.POUNRAJ**[4], the Supreme Court observed in paras 13, 14 and 15 as under:-

"It is well settled by this Court in catena of cases that the power Under Section 482 Code of Criminal Procedure has to be exercised sparingly and cautiously to prevent the abuse of process of any Court and to secure the ends of justice [See ***State of Haryana*** v. ***Bhajanlal*** (1992 SCC (cri) 426). The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power Under Section 482, Code of Criminal Procedure [See***Municipal Coron. of Delhi*** v. ***Ram Kishan Rohtagi*** (1983) 1 SCC 1]. An investigation should not be shut out at the threshold if the allegations have some substance [See ***Vinod Raghuvanshi*** v. ***Ajay Arora*** : (2013) 10 SCC 5811.

An overall perusal of the materials placed before us makes out a prima facie case against the accused which requires to be decided by conducting a proper trial. At this stage the High Court cannot analyse and meticulously consider the evidence and anticipate whether it will end up in conviction or acquittal. This is not the stage to decide whether there is any truth in the allegations made but to form an opinion whether on the basis of the allegation a cognizable offence or offences alleged has been prima facie made out. The guilt or otherwise of the accused can be proved only after conducting a full fledged trial. In the circumstances, in our opinion, it is not proper for the High Court to interfere with the proceedings and quash the final report submitted by the police.

On the other hand we do not think that the High Court

> was right in opining that the dispute between the parties is civil in nature. This is a case where serious allegations were made against the accused party. Just because the allegations involve the factum of recovery of money it cannot be concluded that the complaint is purely civil in nature when the other serious allegations prima facie attract the penal provisions. In our considered opinion High Court seriously misdirected itself in coming to a conclusion that it is for the Competent Civil Court to decide the said appeal. We are unable to agree with the view taken by the learned Single Judge of the High Court. In our opinion, in the background and circumstances of this case the High Court should not have exercised the power Under Section 482, Code of Criminal Procedure which resulted in miscarriage of justice."

17. Applying the above authorities to the facts of the present case, I have no hesitation in holding that it is not a fit case where all further proceedings in criminal cases are liable to be quashed. It is premature to say at this stage that there was no legally enforceable debt for which the cheques in question were issued. *Prime facie,* even though, the accused was entitled to forfeit advance amount of Rs.3 crores, which admittedly he received but still for different reasons, he agreed to return the said amounts and as a matter of fact, returned about Rs.1.09 crores and promising to return the remaining Rs.1.91 crores, issued the cheques in question which ultimately were bounced. These are the aspects which have to be adjudicated only after full-fledged trial. At this stage, it cannot be said as to whether though not liable to but having accepted his liability and issued the cheques and the petitioner/accused can turn round and say that he is not legally liable to pay the amounts which he agreed, for which he issued the cheques.

18. On the other hand, learned Counsel appearing for the petitioner/accused relied upon the **KRISHNA JANARDHAN BHAT v. DATTATRAYA G.HEGDE**[5] and **POOJA RAVINDER DEVIDASANI v. STATE OF MAHARASHTRA**[6]**,** but having perused the same, it is noticed that they are not relevant and applicable to the point in

controversy in the present petitions. In **Krishna Janardhan Bhat's case (referred 5 supra)** the point in issue was about the presumption under Section 138 of the N.I.Act in favour of holder of cheque to show that the cheque has been issued for discharge of any debt or other liability. In **Pooja Ravinder Devidasani's case (referred 6 supra)**, the question of vicarious liability about the Directors of a Company was considered. However, in para 29 of the said Judgment, the Supreme Court made the following observations:-

> "So far as the letter of guarantee is concerned, it gives way for a civil liability which respondent 2 complainant can always pursue the remedy before the appropriate Court. So, the contention that the cheques in question were issued by virtue of such letter of guarantee and hence the appellant is liable under Section 138 read with Section 141 of the NI Act, cannot also be accepted in these proceedings."

19. The authorities that are relied upon by the learned Counsel appearing for the petitioner may be helpful to him at the culmination of the trial but not for the purpose of quashing the complaint at the threshold. As already stated, without there being a full fledged trial, it cannot be said as to whether the cheques in question were not issued in discharge of any legally enforceable debt or that the *de facto* complainant being in possession of the cheques were entitled to present the same for encashment and whether the petitioner/accused has discharged the burden that is cast upon him, as per Section 139 of the N.I.Act insofar as rebuttal of presumption is concerned.

20. Having considered the entire material on record, I have no hesitation in holding that there are no valid grounds to hold that continuation of the criminal prosecution will be the abuse of process of law or that absolutely there is no material whatsoever for proceeding with the trial. There are no merits in the petitions and the same are liable to be dismissed.

21. In the result, all the four Criminal Petitions are dismissed.

It is however noticed that for the same transaction different cases have been filed and the questions that are involved in all the different Calendar Cases is one and the same. However, the complaints have been filed in different Courts and are pending.

1) C.C.No.2308 of 2010 is pending on the file of XIV-Additional Chief Metropolitan Magistrate, Namapally
2) C.C.No.59 of 2010 is pending on the file of Special Metropolitan Magistrate, Rajendra Nagar
3) C.C.No.699 of 2010 is pending on the file of the IX-Metropolitan Magistrate, Miyapur; and
4) C.C.No.104 of 2011 is pending on the file of the XIX-Additional Chief Metropolitan Magistrate, Namapally.

For the sake of convenience and for the effective adjudication of the controversy, since the evidence in all the cases is likely to be same or similar, suo moto exercising the powers under Section 482 Cr.P.C., I deem it proper to transfer all the cases to one Court i.e., XIV-Additional Chief Metropolitan Magistrate, Nampally, for disposal.

Accordingly, under Section 407(2) Cr.P.C., it is ordered that C.C.No.59 of 2010 on the file of the Special Metropolitan Magistrate, Rajendranagar, C.C.No.699 of 2020 on the file of the IX-Metropolitan Magistrate, Miyapur, and C.C.No.104 of 2011 on the file of XIX-Additional Chief Metropolitan Magistrate, Nampally are ordered to be transferred to XIV-Additional Chief Metropolitan Magistrate, Namapally, to be tried along with C.C.No.2308 of 2010.

Miscellaneous petitions, if any, pending in these Criminal Petitions shall stand closed.

M.S.K.Jaiswal, J

Date: 7th January, 2016
Dsr/smr

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[1] AIR 1992 S.C., 604

[2] 2011 (2) ALD (Crl) 948 (SC)

[3] (2014) 14 SCC 22

[4] (2014) 10 SCC 616

[5] (2008) 4 SCC 54

[6] (2014) 16 SCC 1