

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION NO.3640 OF 2016

ORDER:

1. This petition is filed by the petitioners-A1 to A3 under Section 482 Cr.P.C. seeking to quash the proceedings against them in C.C.No.302 of 2015 on the file of the XII Special Magistrate, Hyderabad.

2. Heard and perused the material available on record.

3. It is alleged that A1 is a limited company, which is engaged in operating Airlines under the name and style of "Kingfisher". A2 is the Chairman & Managing Director of A1. A3 is the CFO of A1. A2 and A3 are fully responsible for day-to-day affairs of A1. The accused approached the complainant to operate the flights of A1-company from the complainant's airport premises and requested for permission to land, park and house Aircrafts and accordingly, they executed agreements for Airline Office, ticketing office, Airline Engineering Maintenance office and Maintenance space, which includes payment of charges. The complainant permitted to commence and operate air transport services of the accused with effect from 23.3.2008. It is further alleged that as directed by the Ministry of Civil Aviation (MOCA), the accused have been collecting the Passenger Service Fee (PSF) and User Development Fee (UDF) on behalf of the complainant from the departing passengers. Further, as per the directions of MOCA the said PSF and UDF are meant to be remitted to the complainant without fail. But the accused have been very irregular in payment of the above charges, and they have not paid the outstanding amount. After several demands, A1 issued four cheques duly signed by A3 in favour of the complainant. When the said cheques were presented, the same were dishonoured. Consequently, the complainant filed four complaints separately against the accused

for the offence punishable under Section 138 of the Negotiable Instruments Act. While so, A1 represented by its representatives approached the representatives of the complainant and offered settlement out of Court and accordingly issued settlement letter also. As per the settlement letter, A1 agreed to pay the total outstanding debt in equal monthly instalments at the rate of Rs.50 lakhs and accordingly issued 45 post dated cheques in favour of the complainant. A1 represented by A2 and A3 induced the complainant to trust them and rely on the undertaking given by the accused that they shall honor the cheques without fail. Basing on the settlement letter, the complainant has withdrawn the cases. Subsequently, A3 has sent a letter to the complainant falsely claiming that the debt has been discharged. As per the settlement when the complainant presented cheque bearing No.762968, dated 31.3.2014, the said cheque was returned unpaid. Thus, the accused committed the offence punishable under Section 138 of the Negotiable Instruments Act.

4. It is brought to the notice of this Court that the 3rd petitioner filed a petition before the trial Court under Section 205 Cr.P.C. and the same is pending.

5. Insofar as petitioners 1 and 2-A1 and A2 are concerned, considering the facts and circumstances of the case and the allegations made in the complaint, this Court is not inclined to grant the relief sought by them.

6. Insofar as the 3rd petitioner-A3 is concerned, this Court is not inclined to grant the relief sought by him. However, as it is informed that the 2nd petitioner, who is the Chairman and Managing Director of the 1st petitioner-company, is not available and that the 3rd petitioner filed a petition under Section 205 Cr.P.C. in the above C.C., the trial Court is directed to consider the application filed by the 3rd petitioner under Section 205 Cr.P.C. If the petitioner is aggrieved by any order

that would be passed by the trial Court on the petition filed by him under Section 205 Cr.P.C., he is at liberty to approach this Court.

7. Accordingly, the Criminal Petition is disposed of. Miscellaneous petitions pending, if any, shall stand closed.

Justice Raja Elango

Dated: 17.3.2016

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HONOURABLE SRI JUSTICE RAJA ELANGO

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