

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

CRIMINAL PETITION No.4392 of 2015

ORDER:

The criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.133 of 2015 on the file of the XI Additional Chief Metropolitan Magistrate, Secunderabad, registered for the offences punishable under sections 409, 420 and 506 IPC.

Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor, representing the State.

The petitioners are shown as A.1 and A.2. The 2nd respondent filed a private complaint. In between the petitioners/accused and the *de facto* complainant there was a commercial transaction and the accused were held to be due a sum of Rs.32 lakh to the 2nd respondent. A Memorandum of Understanding was arrived at between the parties, whereunder the petitioners/accused have discharged the debt of Rs.32 lakh, consequent to which C.C.No.1136/2013, which was filed by the 2nd respondent against the petitioners/accused under Section 138 of Negotiable Instruments Act was withdrawn. It is alleged that as per the Memorandum of Understanding, the petitioners/accused have also agreed to pay Rs.5 lakh towards interest and the said amount has not been paid by the petitioners/accused in spite of repeated demands. Hence the complaint.

The contention of the petitioners/accused is that no offence on the face of it is made out so as to proceed with the case and the learned Magistrate has taken cognizance of the case on the face of a private complaint without applying his judicial mind.

The 2nd respondent/*de facto* complainant contends that only on the basis of the assurance made by the petitioners/accused that they will pay Rs.5 lakhs towards interest on or before 13.12.2013, the case against the petitioners/accused under Section 138 of Negotiable

Instruments Act was withdrawn and subsequently the petitioners/accused failed to pay the amount.

Exercise of jurisdiction under Section 482 Cr.P.C to quash the pending proceedings either before the investigating agency or the criminal court is an exceptional power which has to be used with great care and caution. The contents of the First Information Report, charge sheet or the complaint need to be carefully scrutinized for determining as to whether it is a case warranting scuttling further investigation or trial at the inception. What is required to be seen is as to whether or not the allegations in the complaint need to be further verified and probed but not whether the contents thereof are true or not. When it comes to an offence punishable under Section 420 IPC, the crux is the intention of a person who induces the victim of his representation and the nature of the transaction and if the averments *prima facie* make out a case for investigation and trial that cannot be quashed.

In the instant case, the specific allegation of the 2nd respondent/complainant is that in pursuance to the Memorandum of Understanding, dated 13.12.2013, the private complaint filed under Section 138 of Negotiable Instruments Act was withdrawn when the petitioners/accused paid Rs.32 lakhs, but further failed to pay the balance of Rs.5 lakh towards interest which was agreed to be paid by then. Therefore, a perusal of the complaint shows that it is the matter which needs to be enquired into and tried by the trial Court for determining the truthfulness or otherwise of the allegations and it is not a fit case where the trial can be scuttled at the inception.

What is manifest from the record is that the transaction in between the petitioners/A.1 and A.2 and the 2nd respondent/complainant is contractual in nature. According to the de facto complainant, in pursuance to the understanding between the parties, a sum of Rs.32 lakhs was paid and the agreed amount of Rs.5 lakhs towards interest was not paid and thereby the petitioners/A.1 and A.2 committed the offences punishable under Sections 420 and 409

read with 506 I.P.C. On the face of it, the allegations do not attract any of the penal provisions cognizance of which is taken by the learned Magistrate on the basis of a private complaint. If there was an understanding between the parties that in addition to the principal amount of Rs.32 lakhs, the petitioners/A.1 and A.2 are liable to pay Rs.5 lakhs towards interest and that is not paid, the remedy of the 2nd respondent/complainant lies somewhere but he cannot be heard saying that the petitioners/A.1 and A.2 have either committed breach of trust or cheated. In that view of the matter, the continuation of the proceedings in C.C.No.133 of 2015 on the file of the XI-Additional Chief Metropolitan Magistrate, Secunderabad is nothing short of abuse of process of law and hence the same are liable to be quashed.

In the result, the Criminal Petition is allowed quashing all further proceedings in C.C.No.133 of 2015 on the file of the XI-Additional Chief Metropolitan Magistrate, Secunderabad.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 11.06.2015
Dsr/Smr