

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15789 of 2016

ORDER :

This criminal petition is filed by the petitioner/A.2 under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to quash the proceedings in C.C.No.73 of 2015 on the file of the III Special Magistrate, Hyderabad, for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881 (for short, 'the Act').

2. The de facto complainant/2nd respondent herein filed a complaint before the III-Additional Chief Metropolitan Magistrate, Hyderabad under Sections 138 and 142 of the Act alleging that A.1 and A.2 approached him and offered to sell their landed property and the de facto complainant accepted their proposal, entered into an agreement of sale dated 03.08.2012 with A.1, who is the absolute owner of the property admeasuring Ac.1.00 gts. in Sy.No.359 situated at Rajapur Village, Mahabubnagar District, for total consideration of Rs.4,00,000/- and paid advance of Rs.3,00,000/- in cash while agreeing to pay the balance amount at the time of execution of registered sale deed. A.2 is the registered general power attorney holder of A.1. The de facto complainant approached A.1 and A.2 on several occasions, demanded them to receive balance sale consideration of Rs.1,00,000/- and execute registered sale deed, but they dragged the matter for one reason or the other and refused to execute registered sale deed in favour of the de facto complainant.

Subsequently, the accused offered to sell under oral agreement of sale dated 21.03.2013 of another adjacent land admeasuring Ac.0.20 gts. in the same Survey No.359 for a total consideration of Rs.2,00,000/- and received Rs.10,000/- on the same day for the purpose of registration charges. Thus, the accused have totally received a sum of Rs.6,10,000/- towards part of sale consideration for Ac.1.20 gts., in spite of requests, the accused did not perform their part of contractual obligation under the agreement of sale. A.2, who is no other than the father and registered GPA holder of A.1, issued three account payee cheques drawn on M/s.Ratnakar Bank Limited Green Lands, Ameerpet branch, Hyderabad, for Rs.2,00,000/- dated 04.02.2015 and the second and third cheques dated 19.02.2015 for Rs.1,10,000/- and Rs.3,00,000/- respectively, which totally comes to Rs.6,10,000/-. These three cheques were presented for collection with Drawee Bank M/s. Canara Bank, Mozamjahi Market, Hyderabad, and cheques were returned with a memo that payments stopped by the drawer and thereupon followed necessary procedure by issuing notice to the accused demanding to pay the cheque amount, but the accused did not pay the amount covered by the cheques. Therefore, the de facto complainant filed a case before the III-Additional Chief Metropolitan Magistrate, Hyderabad, for the offences punishable under Sections 138 and 142 of N.I.Act.

3. The present criminal petition is filed to quash the said proceedings by raising several contentions, more particularly

contending that the petitioner/A.1 is carrying on business of sale of rice and moving from one country to another country in connection with business and in case of arrest by issuing N.B.Ws., he will be put to serious loss and that the allegations made in the complaint would not attract the offence punishable under Section 138 of the act and prayed to quash the proceedings.

4. As seen from the material on record, the petitioner/A.1 is represented by his father A.2 as GPA holder executed the agreement of sale, but did not execute the registered sale deed even after receiving Rs.6,10,000/- for an extent of Ac.1.20 gts. in Sy.No.359. The petitioner through his GPA holder and father, issued the three cheques referred supra and directed the bank to stop payments even after receiving notice no payment was made, therefore, the allegations made in the complaint on its face value constitutes an offence punishable under Section 138 of the Act and effect of issue of N.B.W. on the business is irrelevant for quashing the proceedings. On overall considerations made in the complaint, I find that those allegations would constitute prima facie an offence punishable under Section 138 of the Act and consequently the criminal petition is liable to be dismissed.

5. Accordingly, the criminal petition is dismissed.

6. Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

8th November 2016
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