HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.5910 of 2014

ORDER :

The petitioners-the Divisional Manager and The Regional Manager of Shri Ram Transport Finance Company Limited, Chennai(for short, 'the Company') are the A.2 and A.3 out of three accused including Branch Manager(A.1), in C.C.No.130 of 2013 pending on the file of II Addl.Judl.First Class Magistrate, Machilipatnam, Krishna District. It is on the private complaint of the 2nd respondent-P.V.S.Rao, the learned Magistrate has taken cognizance for the offences punishable u/sec.409, 420 and 427 r/w 34 IPC.

The averments in the private complaint speak that the complainant requested the A.1-Branch Manager of the Company for sanction of loan to buy tractor for his agricultural purpose for which the A.1 in consultation with the petitioners/A.2 and A.3 sanctioned loan of Rs.2,15,000/- after obtaining sufficient sureties from the complainant. As per the loan agreement and terms of repayment of said loan, the complainant has to clear in 14 equal installments each @ Rs.8,406/- p.m. and after that it was rescheduled for further 32 installments @ Rs.6,270/-. It is further averred that A.1 withheld Rs.25,000/- at the time of sanctioning the loan but not issued any receipt for it and even complainant is regularly paying installments by obtaining the personal loan from the A.1 of Rs.29,000/- and Rs.48,000/- respectively till date A.1 did not issue receipts for the adjustment of amounts and in spite of his requests A.1 did not give statement of account particulars and re-schedule particulars. Finally, complainant paid Rs.15,000/- on 21.12.2009 and requested A.1 to issue statement of loan account particulars but he did not respond for which the complainant told him that he would inform to his higher authorities i.e. A.2 and A.3/petitioners for which A.1 bore grudge against the complainant and consequently A.1 with the help of his staff, highhandedly and illegally without issuing any demand notice for payment of dues and providing time, took away the financed vehicle i.e. tractor and trailer bearing No.AP16 S 9831, on 24.01.2001 and shifted the seized tractor and trailer to a private auto garage on 24.01.2010 with a view to alter the physical features and change of tyres and spares of it. On that complainant immediately issued notice on 02.02.2010 through his counsel to A.1 expressing his readiness to clear all dues if statement particulars were being given. On that A.1 issued reply notice through his counsel to the complainant dt.06.02.2010 stating that he seized only Tractor but not trailer and further alleged that the complainant secreted the trailer and trying to dismantle and sell the parts of it. The A.1 with a view to cause wrongful loss to the complainant with dishonest intention of cheating secreted the trailer of the complainant high-handedly and illegally and committed misappropriation and mischief of it and intentionally changed the tyres and battery and makes efforts to dismantle the same in order to sell away the parts of it which amounts to criminal misappropriation, mischief and also cheating the complainant. Even after that, the efforts of the complainant requesting A.1 to clear the dues became in vain. Then complainant went to the Station House Officer of Inaguduru to lodge a complaint about the illegal and highhanded acts of the A.1 but the police being influenced by the A.1, did not register his complaint and even the A.1 threatened the complainant stating that they would utilize the blank signed cheques obtained by them from the complainant at the time of sanctioning loan for filing cheques bounce cases and also criminal case alleging as the complainant dismantled the trailer and changed the tyres and spare parts. Even the complainant ultimately on 10.02.2010 took Demand Draft bearing No.891953, for Rs.20,000/- drawn on State Bank of Hyderabad, Machilipatnam in favour of A.1 and sent it along with covering letter to the A.1 by registered post. The above acts of the A.1 caused the complainant damage to the agricultural work of Rs.1,000/- per day and when all these things are intimated to the A.2 and A.3/petitioners herein but they did not respond. Hence the private complaint. Impugning said cognizance order in C.C.No.130 of 2013, the petitioners preferred the Criminal Petition.

The grounds urged in the quash petition by the A.2 and A.3 are that the complainant obtained a loan of Rs.2,15,000/- for purchase of tractor and trailer and the loan sanctioned covered by the loan–cum-hypothecation agreement, dt.15.02.2008 for which one R. Venkateshwaara Rao is the guarantor, the 2nd respondent committed default by violation of the terms and condition of the loan/hypothecation agreement despite final notice,dt.16.01.2010 to clear the dues and thereby on 24.01.2010, the Company re-possessed the tractor only not the trolley and intimated said re-possession of said tractor only to the 2nd respondent and his guarantor by telegram and also to the Indugula P.S. for information. On 27.01.2010 a notice also cause issued to the 2nd respondent and the guarantor which they acknowledged and they came with a false version for which suitable reply including by loan letter,dt.12.02.2010 apart from legal notice dt.01.03.2010. the 2nd respondent earlier filed PLC No.112 of 2010 before the Lok Adalath Bench, Machilipatnam which was not settled and it is only on knowing and thereafter the false criminal complaint is filed with baseless allegations and the cognizance taken on the private complaint is unsustainable and liable to be quashed as was done in similar matter by this Court earlier referring Indian Oil Corporation vs. NEPC India Ltd[1] for the same is purely a civil dispute cannot be allowed to launch prosecution and continue the private complaint.

Heard the learned counsel for the petitioners/A.2 and A.3 and also the learned counsel for the 2nd respondent and perused the material on record.

Undisputedly, the quash petitioners/A.2 and A.3 no way committed any acts much less constituting any offence even from the very reading of the private complaint and sworn statement and

[1] AIR 2006(6) SC 736

cognizance order of the learned Magistrate though the cognizance order itself is cryptic without discretion of what material to take cognizance. Even from what all the complaint averments and the sworn statement speak about intimation of acts of A.1 to A.2 and A.3 and they did not respond which no way constitute any offence suffice to say, the cognizance order of the learned Magistrate is sheer non-application of the mind to the facts. In this regard, it is necessary to follow the guidelines of the Apex Court in **State of Haryana v. Bhajan Lal**[2], and also the recent past settled expressions of the Apex Court in Mrs. Priyanka Srivastava and another Vs.State of Uttar Pradesh in Crl.A.No.781 of 2012,dt.19.03.2015 held by scanning the law at para-19 that–this Court in Maksud Saiyed Vs.State of Gujarat[3] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) or Section 200 CrPC and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. Thus, the proceedings so far as the petitioners/A.2 and A.3 are liable to be quashed.

In the result, the Criminal Petition is allowed by quashing the proceedings in C.C.No.130 of 2013 pending on the file of II

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[2] (1992) Suppl.(1) SCC 335
[3] (2008) 5 SCC 668

Addl. Judl. First Class Magistrate, Machilipatnam, Krishna District. The case against them is acquitted and their bail bonds shall stand cancelled. Consequently, pending miscellaneous petitions, if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:06.10.2017
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