SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.5177 of 2011

ORDER:

This petition is filed, seeking for quash of the proceedings in FIR.No.451 of 2011, dated 16.06.2011, registered by the Police Station, Punjagutta, for the offences under Sections 406 and 420 of the Indian Penal Code, 1860 on the file of the XIV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.

2. Heard the counsel for the petitioner, the counsel for the second respondent and the learned Public Prosecutor, who takes notice for the first respondent.

3. The counsel for the petitioners contends that in another case, which is filed by some other persons, who were allegedly cheated by the petitioners herein, which was registered as Cr.No.197 of 2005, this Court by virtue of orders dated 14.03.2007 in CRLP.No.4991 of 2005 quashed the proceedings and hence, this petition also needs to be allowed.

4. A perusal of the said order, which is filed before this Court, would show that the offences alleged therein are under Section 420 IPC and Section 5 of the A.P. Protection of Depositors of Financial Establishments Act, 1999. But, in this case, in addition to Section 420 IPC, Section 406 IPC is also added.

5. The grievance of the defacto complainant is that he has invested his superannuation terminal benefits and savings with the first

petitioner company in the share of model secure redeemable non-convertible bonds, to meet his family financial needs, from the interest. The petitioners failed to pay along with interest the said amount, in spite of representations and in spite of the bonds being matured and only a sum of Rs.2 lakhs was paid.

6. So far as the petitioners in the other case are concerned, this Court observed that the corporation filed CP.No.83 of 2002 seeking approval of the scheme of arrangement and the same was dismissed against which OSA.No.69 of 2003 was filed and it was allowed and the matter was remitted to the company Court for fresh hearing. The Court observed that the Model Finance Corporation filed a petition seeking approval of the scheme of arrangement and stay was granted and when the mater was carried in OSA.No.69 of 2003, initially interim stay was granted and it was extended until further orders and from that it is clear that the company has approached the company Court and submitted the scheme, which means that it is willing to repay the amount to the depositor. But the defacto complainant herein states that he was not a member in the said scheme and hence, the said reasoning cannot form a basis for quashing the proceedings against the petitioners in this case.

7. The counsel for the petitioners takes this Court through the order of this Court in CA.No.531 of 2002 in CP.No.83 of 2002 by virtue of which stay was granted by this Court, in view of the argument that the acts of filing civil suits is going to effect the implementation of the arrangement of the scheme proposed by the company. The counsel further submits that all the creditors are included in the scheme and

hence the grievance of the complainant in this case would also be taken care of. But the counsel for the defacto complainant refutes the said submission.

8. The counsel for the petitioners is not in a position to support her contention that the petitioner company herein is also included in the list of creditors. But, however, no element of cheating can be made out, as the fact remains that a scheme of arrangement for repaying the debts is made by the petitioner company, which would imply that there was no intention to cheat the complainant, from the inception of the transaction.

9. In order to see whether the crime for the offence punishable under Section 406 IPC can be sustained, Section 405 IPC, which defines breach of trust, can be looked into, which is as under:

> 405. Criminal Breach of Trust.- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

10. There is no evidence or material to show that the monies that were entrusted to the petitioner company were misappropriated or not. Hence, until it is proved that there was no misappropriation, the monies entrusted to the petitioner company have to be assumed as being misappropriated, since there is failure of payment to the defacto complainant, as promised. Hence so far as the offence under

Section 406 IPC is concerned, this Court opines that it is not advisable to quash the proceedings.

The criminal petition is partly allowed by quashing the proceedings relating to the offence under Section 420 IPC in FIR.No.451 of 2011, dated 16.06.2011, registered by the Police Station, Punjagutta, on the file of the XIV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, but it is dismissed so far as the offence under Section 406 IPC is concerned. The interim stay, granted earlier in CRLPMP.No.5245 of 2011 in CRLP.No.5177 of 2011 dated 29.06.2011, shall stand vacated. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

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T. RAJANI, J

December 15, 2017
DSK