HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.7276, 7277 & 7670 of 2017

COMMON ORDER:

The three quash petitions came for common hearing and common disposal which are outcome of CC.No.752 of 2017 pending on the file of learned III Additional Chief Metropolitan Magistrate, Hyderabad, where the complainant was P. Padma Priya and accused is D. Srinivas for the offences punishable under Sections 380, 406, 420, 468, 471 and 506 IPC form the police final report outcome of crime No.577 of 2013 dated 01.07.2013 of Banjara Hills Police Station, from the private complaint dated 13.06.2013 referred to police for investigation by the learned Magistrate in registering the crime and filing the final report and taking of cognizance vide docket order dated 20.07.2017, since impugned for several grounds including the cognizance order as mechanical and without application of mind and none of the offences made out and the same is nothing but counter blast to the cheque dishonour private complaint in CC.Nos.299 of 2012 and 589 of 2014 (old C.C.No.379 of 2012) pending of the file of I Special Magistrate, Vijayawada, filed by said Srinivas against said Padma Priya, with belated and after thought version by planting witnesses by said Padma Priya. The said Padma Priya is the quash petitioner in the other two criminal petitions seeking to quash to the cheque dishonour cases in CC.Nos.299 of 2012 and 589 of 2014.

The contentions in the quash petitions of said Padma Priya for the cheque dishonour 2 cases are that there is already Civil suit in OS.No.312 of 2014 filed recovery of amount of cheques in question on the file of XII Additional District Judge, Vijayawada.

Several papers and cheques were stolen from the premises of said Padma priya and said Srinivas misused such cheques in filing the cheque dishonour cases by theft, fraud, forgery, breach of trust, forgery for the purpose of cheating and using as genuine the forged documents and in relation to it CC.No.752 of 2017 supra is pending and in said C.C.No.752 of 2017 concerned, one K. Sravani previous employ of said Padma priya in her Section 164 Cr.P.C statement stated about worked as data entry operator from 2002 to 2013 in Padma Creams Private Limited at Goshala, Vijayawada, and said Srinivas was one of its Director and he asked her to write 2 cheques on behalf of the company and she handed over the said cheques to him and thereby the cheques in question are not for and debt are other liability much less legally enforceable and proceedings are liable to be quashed. It is sum and substance of the contentions and rival contentions between said Srinivas and Padma Priya supra for the 3 quash petitions respectively seeking to quash no way requires repetition for what is contained in gist supra.

Before coming to Crl.P.No.7670 of 2017 seeking to quash the proceedings of C.C.No.752 of 2017 pending on the file of the file III ACMM, Hyderabad, on the private complaint of Smt. Padma Priya referred to police by learned Magistrate, from which crime registered and final report filed and taken cognizance by the learned Magistrate for the offences supra against said Srinivas, who sought for quashing; the 2 cheque dishonour cases sought for quashing by Padma Priya, which are outcome of private complaints of said Srinivas. It is her contention further that as part of investigation of crime No.577 of 2013 of Banjara Hills Police

Station, the cheques were sent to handwriting expert and opinion of Assistant Director received and matched with the handwriting of employee of Padma Creams Private Limited and this substantiates from K. Sravani said employee statement also of the cheques are not for legally enforceable debt concerned. The complaint averments in the 2 cheque bounce cases clearly show the complainant and accused are family friends and from the amounts borrowed by accused from the complainant in June 2009, of Rs.10,00,000/- and for the amounts fallen due, the 2 post dated cheques in question were issued and the same when presented returned dishonour and statutory notice issued respectively and the accused failed to pay despite it and thereby liable. The private complaints filed for the 2 cheque dishonour cases were in October, 2010. So far as C.C.No.299 of 2012 concerned, that was originally covered by CC.No.816 of 2011 and filing C.F.No.8096 of 2011 and the other private complaint so far as C.C.No.589 of 2014 (old C.C.No.379 of 2012) was dated 12.04.2012 in filing CF.No.4692 of 2012. In CC.No.299 of 2012 (C.C.No.816 of 2011) after taken on file against the accused for the offence under Section 138 of Negotiable Instruments Act, summons were ordered to be issued to serve on accused by 14.12.2011 and accused put forth appearance subsequent to that similarly in C.C.No.589 of 2014 supra taken cognizance and summons issued for appearance of accused by 20.06.2012 and served. Prior to that legal notice sent, the cover was returned so far as CC.No.299 of 2012 concerned, whereas in CC.No.589 of 2014 it was served on 19.03.2012 with postal acknowledgement and said Padma Priya got knowledge even from sad postal acknowledgement dated 19.03.2012 referring to the transaction covered by 2 cheques in question.

From this background and even from the quash petition averments, the cheques in question routed from the account and bears the signature of the accused when not in dispute whether it is for a legally enforceable debt or other liability or not as the case may be is a matter for trial in view of the disputed questions of fact requires adjudication during trail. Thereby and also from the expression of the Apex Court in **Suryalakshmi Cotton Mills Limited Vs. Rajvir Industries Limited and Others**[1] at Paras 20 & 22, having regard to the above the 2 petitions are liable to be dismissed by the left open all available defences to the accused including as to the alleged cheques in question were not issued for legally enforceable debt or other liability from the burden lies to establish the same to rebut the presumption.

In the above background of facts coming to CC.No.752 of 2017 sought for quashing concerned as referred supra for the cheques in question of 29.08.2011 for Rs.10,00,000/- and 15.09.2011 for Rs.10,00,000/- bearing Nos.016603 and 016604 respectively presented and dishonoured and leave about the statutory notice of the 1st cheque issued in September 2011 returned unclaimed, for the 2nd cheque statutory notice served on 19.03.2012 and even the so called employee K. Sravani whose section 164 Cr.P.C. statement said to have recorded by the IO of crime No.577 of 2013 claimed working even subsequent to that hardly believable of she did not inform said Padma Priya, the complainant, of the said private complaint dated 13.06.2013 that

[1] (2008) 13 SCC 678

too without even police report earlier after the serving of statutory notice on the cheques in question latest by 19.03.2012, there is no explanation as to why she waited without even police report much less in writing much left if at all refused by SHO in sending to Superintendent of Police by registered post as contemplated by law in asking to refer to the police and learned Magistrate for the sake of asking in so referring in registering the crime and filing of final report and taking of cognizance therefrom. What all the private complaint averments registered as FIR speak are complainant and accused are family friends and they do some or other business and in saying complainant with her husband in residing in Tamil Nadu till 2008 and in September 2009, she noticed that accused misappropriated funds and questioned him for which he was giving evasive replies and in April 2011 and August 2011 during one of the visits of accused to the complainant's house left his original titanium credit card statement of HDFC dated 10.06.2011 and Scooter bearing No AP-16-AL-5749 and handed over keys to the daughter of the watchman of the apartment, who handed over to the complainant stating it was giving trouble and send his person to attend repairs, but he did not take back the vehicle from the premises and to her surprise she received summons in CC.No.816 of 2011 for the NI Act offence stating she borrowed Rs.20,00,000/- covered by the 2 cheque bearing Nos.016603 & 04 each for Rs.10,00,000/- and same were returned, however she did not borrow and accused also sent mail through his email on 02.12.2011 and warned her to meet his demands else to use the blank singed cheque in his possession of her through third persons and in last week of May 2011, accused came to the house of complainant and stolen blank signed cheques bearing Nos.016603 to 10 drawn on IDBI Bank, Vijayawada and signed cheques of Andhra Bank and signed blank paper of IP trust and property documents pertaining to her husband and of hers and of business activities kept in her Almirah and converted 2 of the said blank cheques bearing No.016603 and 04 in filing the cheque bounce cases and thereby cheated her by committing theft and using as genuine a forged document having forged for the purpose of cheating.

In her complaint even she came to know for summon served in 2011 of the 1st cheque case she did not point out her little finger till filing of the private complaint and did not state anything regarding the delay. It is not even her case of she presented any written report and what she stated as she lodged complaint with SHO dated 01.02.2012 and there is inaction and that is not even enclosed with the private complaint, but for saying the complaint is in time and that too hardly believable of the so called taking away of cheques etc., by the accused from her Almirah from his visits in May 2011, for could it be believed of she never noticed by opened the Almirah all through for such long time till filing of the private complaint in June 2013 or till her lodging of report to Police on 01.02.2012 and for keeping quiet even if it all any complaint given apart from no proof for no action. It clearly indicates as contented by the learned counsel for accused of C.C.No.752 of 2017 that it is to get over 2 cheque bounce cases claim if any this private complaint is a waived story brought into existence in cause referring mechanically for the sake of asking by learned Magistrate in obliging without applying of mind and without filing a copy of complaint to the police if any and in registering the crime that too when signatures on the cheques as drawer not in dispute and cheques routed from the account not in dispute and that gives presumption as held by Apex Court in **Rangappa Vs. Sri Mohan**[2] for the reverse onus clause burden on the accused of the cheque bounce case if at all to show no debt or other liability, mere recording of statement of one K. Sravani even under investigation under Section 164 Cr.P.C. or any opinion received of handwriting in the cheque no way can be sufficient to say the cheque in question is forged one much less for the purpose of cheating or using as genuine any forged document apart from there is no breach of trust for nothing of entrustment and the filing of final report and taking of cognizance by the learned Magistrate in the factual scenario is thereby liable to the quashed to sub serve the ends of justice.

Accordingly and in the result, the Crl.P.No.7670 of 2017 is allowed by quashing the proceedings against D.Srinivas in C.C.No.752 of 2017 and Crl.P.Nos.7276 & 7277 of 2017 are disposed of by left open all available defences of the accused during trial.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 25.10.2017
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[2] (2010) 11 SCC 441