

HON'BLE SMT. JUSTICE T. RAJANI

Criminal Petition No.536 of 2017

ORDER:

This petition is filed seeking quash of the proceedings in C.C.No.732 of 2016 on the file of Additional Judicial Magistrate of First Class, Medak District at Sanga Reddy.

The offence against the petitioner is under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act').

The grounds on which the petitioner sought for are that the complainant suppressed the fact that there was an agreement between the petitioner and the complainant and that Clause (C) of the Minutes of Meeting dated 18.07.2015 at Secunderabad is to the effect that based on the quality assurance provided by Parekhplast India Limited Prathista Industries Limited agreed to procure packing materials for their further requirements with 90 days credit by providing bill to bill post-dated cheques. But the respondent has not supplied materials as per agreed quality and hence, the petitioner was not satisfied with the quality of the materials and stopped the cheque payment; suppression of fact before the Court amounts to misleading the Court and if the complainant had mentioned the above material fact, the Court would not have admitted the case.

Heard both counsel.

Learned counsel for the petitioner contends that there is an agreement between the parties and that subject to the quality of the material supplied, the cheques were agreed to be honoured, but the complainant suppressed the said agreement and filed this case.

Learned counsel for the respondent/complainant contends that the said agreement does not have any relation to these cheques. The agreement copy is also filed by the petitioner, which is dated 18.07.2015. Clause (C) of the Agreement spells as follows:

“Based on quality assurance provided Parekhplast India Limited, Prathista Industries Limited agrees to procure packing materials for their further requirements with 90 days credit by providing bill to bill post-dated cheques.”

The complainant filed invoices which are subsequent to the agreement. They are in the month of August, 2015. The complainant sent a notice to the petitioner on the dishonour of the cheques issued by him, but there was no reply issued by the petitioner. The cheques were dishonoured on the ground that ‘stop payment’ instructions were issued to the bank. If there was any violation with regard to the terms of the agreement, the petitioner ought to have issued a reply to the complainant taking the said ground. But his failure would estop him from contending that due to the material being not in accordance with the agreed quality, instructions to ‘stop payment’ were issued.

Learned counsel for the petitioner relied on a decision of the High Court of Chhattisgarh at Bilaspur in **Rajkumar Sharma v Shriram Finance Co. Ltd.** (Cr.M.P.No.128 of 2014). The fact of that case are that there was an hire purchase agreement between the parties and on the default committed by the accused therein the complainant seized the vehicle and sold the vehicle and having done so, the cheques issued by the accused were also presented. Hence, in those circumstances, the Court held suppression of the fact of purchase agreement would amount to suppression of important material and quashed the complaint.

The facts in this case are totally different from the facts of the said case. Hence, the above decision does not help the petitioner.

Learned counsel for the petitioner also relied on a decision of the High Court of Chhattisgarh at Bilaspur in **M/s Bellary Steels and Alloys Ltd and another v M/s Vandana Ispat Private Ltd and another** (M.Cr.C.No.1419 of 2005). In this decision, the facts of the case reveals that the complainant did not come to the Court with clean hands as he did not reveal the fact that after issuing legal notice, he received a sum of Rs.14 lakhs by encashing the Bank draft sent by petitioner No.1 and even then did not return the original cheque which he was very much required to do as soon as the payment offered by petitioner No.1 was accepted by him. That is not the case in this case.

Learned counsel for the petitioner further relied on a decision of the Apex Court in **Indus Airways Private Limited and others v Magnum Aviation Private Limited and another**¹, wherein it was held that there should be a legally enforceable debt or liability to attract the offence punishable under Section 138 of the Act and when the materials supplied were not in accordance with the agreement, there cannot be any liability.

As already observed, the petitioner herein did not issue any reply notice to the complainant stating that 'stop payment' instructions were issued as the materials were not according to the agreed quality and the learned counsel for the petitioner contends that the cheques were not in respect of the said agreement. Hence, all these issues have to be gone into at the time of trial, as such quashing of the proceedings at this stage would prejudice the interest of the complainant and therefore, the criminal petition is liable to be dismissed.

¹ (2014)12 SCC 539

Accordingly, the criminal petition is dismissed.

Miscellaneous petitions, if any, pending in the criminal petition, shall stand closed.

JUSTICE T. RAJANI

Date: 11.10.2017
Kvrm/LSK



