HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.4828 of 2009

ORDER:

The petitioner is accused No.4 among four accused in C.C. No.2783 of 2005 on the file of I Additional Chief Metropolitan Magistrate, Hyderabad. The learned Magistrate has taken cognizance for the offences punishable under Sections 468 and 420 r/w 120-B IPC, which is outcome of Crime No.152 of 2000 of Saifabad Police Station, Hyderabad City.

2) The contention of the petitioner/ accused No.4 impugning the said cognizance from the police final report covered by Crime No.152 of 2000 dated 04.04.2000 in subsistence including from oral submissions vis-à-vis what is urged in the grounds is that the petitioner/ accused No.4 himself became a victim in the hands of accused Nos.1 to 3 and bank officials apart from the so-called auditor—S.N.Agarwal. It is his further contention that the petitioner, being a proprietor of Balaji Industries, Hyderabad, approached the bank officials for availing the loan, that they directed to approach the auditor in turn referred supra, that when he approached the auditor, tagged him to accused Nos.1 to 3 saying that they already, by mortgage of their property worth more than one crore, availed two facilities of Rs.15,00,000/- and Rs.10,00,000/- respectively and the petitioner can avail the credit facility with that collateral security and he believed them and became a victim in their hands and that there was some payment initially and he committed default because of financial constraints for a short span. However, even though he wanted to pay the amount, the bank is not accepting much less for

one time settlement and being a victim, he cannot be termed as accused and the filing of final report showing as accused instead of witness and taking of cognizance, thereby unsustainable and the proceedings against him are liable to be quashed.

3) The 2nd respondent—bank manager even served with notice failed to attend, hence taken as heard.

4) Whereas, it is the submission of the learned Public Prosecutor that the registration of the crime and filing of final report and taking of cognizance no way requires interference but for dismissal of the petition so that the Court can proceed with C.C. No.2783 of 2005 and whatever the defences of the petitioner/ accused are available to urge before the trial Court to consider on merits.

5) Heard and perused the material on record.

6) The petitioner has not even disputed in the quash petition that he availed the credit facility on the collateral security created by accused Nos.1 to 3. It is the allegation of he is also privy with them as the original collateral security created by accused Nos.1 to 3 is a fake one including not only the so called title deeds and source of title of the so-called vendors but also the alleged municipal tax receipts and acts of possession.

7) Once, the petitioner availed the said loan, there is nothing for this Court to interdict the trial of the said case from the cognizance taken. Hence, the petition is disposed of. Needless to say, it is left open to the petitioner to avail all the defences, including if not any charges framed, to urge for discharge and the

trial Court to consider on own merits from the material on record. Needless to say, other remedy available, if at all, is to urge the Court to invoke Section 216 Cr.P.C., if at all any charge framed otherwise unsustainable, and if at all, the petitioner feels it difficult to attend before the Court for day-to-day trial, it is left open to him to represent through special vakalat holder by filing an application under Section 205 Cr.P.C, which the trial Court to decide on its own merits.

8) Accordingly, the Criminal Petition is disposed of.

9) Consequently, miscellaneous petitions pending, if any, in this Criminal Petition shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 17.08.2017
Knl