THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.15938 of 2016

ORDER :

The petitioner is sole accused of C.C.No.1150 of 2013 pending on the file of the X Metropolitan Magistrate, Malkagigiri, Cyberabad, which is outcome Cr.No.443 of 2013 registered by P.S.Kushaiguda, on the report of the 2nd respondent/defacto-complainant, dt.11.08.2013 taken cognizance by the learned Magistrate for the offences punishable u/sec.420 and 406IPC, seeking to quash the proceedings in the above Calander Case.

The police registered FIR and filed chargesheet for the offences punishable u/sec.420 and 406 IPC against the petitioner herein which reveals that the accused is cousin brother of the defacto-complainant and the defacto-complainant is running a Mobile shop at ECIL cross roads in the name and style of Bhanu Mobiles and the accused also running a mobile shop in the name of Sri Sairam Mobiles situated at Kamala Nagar,Kushaiguda. The complainant gave hand loan of Rs.1,20,30,000/- to the accused for his business and when in the month of July,2013 asked for repayment, the accused absconded from that day and on 10.08.2013 when father of the accused invited to his home, the complainant went there where the accused admitted borrowal in the presence of elders but stated that he was not having money to repay. The accused used to collect huge amount from the people whoever comes to his shop and as usual he collected an amount of Rs.1,20,30,000/- on different dates from the last two years and as well as Rs.22,00,000/- from L.W.2, Rs.13,80,000/- from L.W.3, Rs.4,79,000/- from L.W.4, Rs.1,40,000/- from L.W.5, Rs.5,00,000/- from L.W.6 and failed to return the amount to the complainant and the accused dishonestly misappropriated the amounts.

On perusal of the FIR No.443 of 2013 dt.11.08.2013 no way correlates to the police final report even. Thereby none of the offences u/sec.420 and 406 attracts to the case on hand from perusal of police final report from the learned Magistrate to take cognizance and what the complainant stated given handloan of Rs.1,20,30,000/- to the accused.

There is also a complaint lodged by the accused herein with regard to the same incident against the defacto-complainant which shows that he is running a mobile for repairing, recharging and selling spare parts opposite to the gate of Kushaiguda DAE colony. Before establishment of the shop, he ran another shop which is in front of the mobile shop of one Adi Ravikumar @ Shankar(defacto-complainant in the present crime) by that whoever the customer approached his shop for the purpose of purchasing some disturbance was arisen for that the defacto-complainant herein forced to shift his shop otherwise threatened him, accordingly he shifted his business to the present place. While in that course on 08.10.2013 one Raju, Munna, Intaki Ravi and 7 and 8 members came to his house and threatened his father saying to remove the shop. The next day i.e. on 11.08.2013 when he was opening his shop, Ravi, and Ramakrishan and other 5 to 6 entered into his shop and threatened him. Earlier to this incident, i.e. on 13.07.2013 when they were threatening him he left to Yadagirigutta for commit suicide, for which his father approached the police station on 31.07.2013 by 1.30 P.M., and gave complaint. Then the police through his phone signals brought him to this police station and then they requested his father accordingly to drop the complaint then his father withdrew the complaint. On 01.08.2013 night because of this harassment, he take sleeping pills to commit suicide, on that on 02.0.2013 by morning his family members took him to Srinivas Hospital thereafter they shifted him Nizam Hopsital and also Yasoda hospital admitted him, thereafter on 03.08.2013 discharged him. They conveyed their apology and again they were harassing him.

In fact, the collecting of amount as loan and failure to pay itself no way constitutes the offence of cheating and breach of trust. Accordingly, the FIR and also the police investigation discloses including before the elders accused admitted about the borrowal however not in a position to pay and thereby nothing to say any element of cheating from the non payment. It is lending and not any entrustment to attract the offence criminal breach of trust. Even none of the ingredients of the offences supra that attract, leave about the accused also given a police report.

Further against the accused herein, there was a cheque(bearing No.003536 dt.02.08.2013 for Rs.11,30,000/-) bounce case vide C.C.No.271 of 2014 which is outcome of the complaint of one Somishetti Ramakrishna, which case was ended in acquittal saying the complaint no way attracts statutory requirements to take cognizance for not filed within time u/sec.142 of the Act, and there is another cheque bounce case vide C.C.No.247 of 2014 filed against the accused by B.Amar Bhushan Kumar, for the offence u/sec.138 of the N.I.Act based on Cheques bearing Nos.003525 and 003531 that case was also ended in acquittal for nothing to establish the cheques issued were for legally enforceable debts.

Having regard to the above, the matter is predominantly civil in nature apart from the ingredients of Section 420 and 406 of IPC no way attract to the case on hand.

In the result, the Criminal Petition is allowed by quashing the proceedings in C.C.No.1150 of 2013 pending on the file of the X Metropolitan Magistrate, Malkagigiri, Cyberabad, against the petitioner and he is acquitted and his bail bonds shall stand closed. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:04.10.2017
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