

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.11211 of 2011

ORDER:

This petition is filed seeking for quash of the proceedings in CC.No.275 of 2011 on the file of the IX Metropolitan Magistrate, Cyberabad at Kukatpally.

2. Heard the counsel for the petitioner; the Public Prosecutor appearing for the 1st respondent and the counsel for the 2nd respondent.

3. The complaint was referred by the Court, which contains the allegations that the complainant was doing business in the name and style of M/s. Sri Sai Sravani Steel Traders and the accused was also doing similar business in the name and style of M/s. Anu Engineering and both are known to each other. The accused approached the complainant to purchase building steel on credit and believing the same, the complainant gave the steel on credit by opening a running khata account. On 28.03.2010 and also on 31.03.2010 the accused purchased steel for total amount of Rs.19,30,807/- from the complainant in different quantities and further promised to pay the said amount along with interest at 24% per annum. After receiving the steel, the accused issued cheques, which were dishonoured, when presented for collection by the complainant. When the complainant requested the accused to pay the said amount, the accused, with the help of rowdy sheeters and unsocial elements, threatened the complainant with dire consequences.

Hence, the complainant seeks for prosecution of the accused for the offences under Sections 420, 427, 447 and 506 IPC.

4. The counsel for the petitioner contends that the alleged offences are not attracted to the facts of this case, as there is no material to say that the accused had an intention to cheat the complainant, from the inception. He further contends that the cheques were issued at the time of receiving the material and hence, it cannot be said that there was an element of cheating in the mind of the accused.

5. On the other hand, the counsel for the second respondent submits that the cheques were not issued on the date of taking delivery of the material but they were issued subsequently.

6. The averments are that the material was already supplied and the cheques were issued subsequently.

7. As regards the offence under Sections 447 and 506 IPC, the allegations are that the accused approached the complainant and threatened him. But the place of such threats is stated to be Huda bus stop, which cannot be said to be the property of the complainant as required by section 441 IPC which defines criminal trespass, which is made punishable under section 447 IPC. Hence the prosecution for the said offence cannot be permitted. But the allegations are sufficient enough to constitute an offence under section 506 IPC are made in the complaint. Hence quashing of proceedings with regard to the said offence is declined.

As regards the offence under Section 427 IPC, this Court does not find any material constituting the said offence, as there is no allegation that there was any destruction of property, which would attract Section 427 IPC. Hence, proceedings, insofar as Section 427 IPC are concerned, are quashed against the petitioners.

8. As regards the offence section 420 IPC, the counsel for the petitioner relies on a decision of this Court in *G. Man Mohan Hari Prakash v. State of Andhra Pradesh and another*¹. The facts of the case dealt with by this Court are that there was no allegation of any representation or deception while issuing the cheque and the second respondent did not part with any property or valuable security. The court also observed that the allegation of deception is on the date of issuance of cheque and not on the date of entering into agreement for trading in commodities. In this case also no averment, that there was any representation or deception at the time of the issuance of cheque, is made in the complaint.

9. In *Chelluboyina Satyanarayana v. State of Andhra Pradesh*², this Court observed and held that it is well settled that deception cannot be inferred basing on a mere dishonour of cheque and section 420 IPC is not attracted unless malafide intention of the person issuing the cheque is established. It was observed that no specific instances of malafide intention have been pleaded. The court held that dishonest intention and

¹ 2011(1) ALD (CrI.) 882 (AP)

² 2012(2) ALD (CrI.) 120 (AP)

misrepresentation are to be specifically indicated to attract the provision under section 420 IPC. However the court held that what has to be quashed is only the order of the magistrate taking cognizance and not the complaint and that the complainant is at liberty to adduce evidence at pre cognizance stage and then the magistrate can take cognizance after considering the material.

10. In *P.Eswara Reddy v. State of A.P.*³, this court observed that so far as the transaction, which took place on a particular date, was concerned, there was not even an allegation that on that day, the petitioner had any dishonest intention. It was held that the dishonour of a cheque for an antecedent debt does not amount to cheating. It was observed that on the date of the cheque, the goods were received by the accused and that happened much earlier to the cheque and the debt was already incurred. By relying on the judgment in *K. Surendran v. P. Ramachandran Nair* [1967 Mad LJ (Crl) 793], the court held that mere evasion or deferment in the realisation of the amount, which amounts to pecuniary advantage obtained by the accused cannot, under the Indian law, be treated as an offence.

11. In the light of the above decisions, a perusal of the complaint shows that it is only from the dishonour of the cheques that the complainant gathers an opinion that there was malafide intention on the part of the accused. No averments, absolutely, with regard to the accused issuing the cheque with a

³ 1986 Cri.L.J. 207

malafide intention, are made. Hence the prosecution for the offence under section 420 IPC cannot be permitted and the proceedings in respect of the said offence are quashed.

In the result the petition is partly allowed by quashing the proceedings in CC.No.275 of 2011 on the file of the IX Metropolitan Magistrate, Cyberabad at Kukatpally for the offences under sections 420, 427 and 447 IPC against the petitioner herein. The proceedings insofar as the offences under section 506 IPC shall go on against the petitioner.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

December 6, 2017
LMV



T. RAJANI, J