

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No. 7675 OF 2010

ORDER :

The petitioner is the accused of Cr.No.24 of 2007 of Koderu Police Station of Krishna district, registered for the offences punishable under Section 420 IPC allegedly committed prior to 20.03.2007 of the First Information Report registered on 22.04.2007 from the report of 29 persons in all shown as defacto-complainants who are no other than the creditors of the debtor I.P. No.18 of 2007 filed by the petitioner pending on the file of the learned Senior Civil Judge, Avanigadda, the police after investigation filed chargesheet for said offence against him and the learned Magistrate numbered as C.C.No.237 of 2007. The petitioner is seeking to quash proceedings in the above Calander Case with the contentions that he did not commit any offence found from the perusal of the averments in that so called common report of more than 28 complainants to register the crime for the offence u/sec.420 IPC much less to file chargesheet. He claims that he did commission business in paddy by purchasing from the farmers and was supplying to the rice mill owners and others for more than ten years where he sustained loss and fell due certain amounts to the farmers of Viswanadhapalli and surrounding villages including to the defacto-complainants-R.2 to R.29 and he sustained loss mainly because of the paddy purchased for heavy price was discolored due to heavy rains and damaged and for that reason the millers paid very low price saying inferior quality and explaining

these facts he filed the Insolvency Petition and there is no intention of him to cheat any of the creditors much less to evade payments but for became insolvent so to adjudge and distribute whatever proceeds he gets, to the creditors and there is no element of cheating and thereby sought for quashing of the proceedings in the above Calander Case.

Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the 1st respondent-State and most of the respondents but for few are served but failed to attend and perused the FIR, police final report and other material on record.

From the perusal of the complaint it shows that the amount due is of Rs.10,11,171/-(Rupees ten lakhs eleven thousand one hundred and seventy one only) in all to the 29 defacto-complainants who are agricultural farmers, having invested their sweat and hard earnings, cultivated paddy and sold to the petitioner on credit basis during January and February and the petitioner was postponing the payment and from 20th March, 2007, he disappeared to evade payment for wrongful gain.

From the very First Information Report, there is nothing to show any dishonest intention of the petitioner from the inception, to sustain the criminal prosecution for the offence of cheating. In the absence of which, mere purchase on credit and failure to repay, leave about inability from became insolvent itself, does not constitute the offence of cheating but for any civil liability to enforce against him and even the police final report from the examination and statements

of these persons no way improves the case for nothing to show dishonest intention from the inception on purchase of paddy to evade payment. In view of the forgoing discussion, no ingredients of the offence of cheating made out as also held by this Court in **M.Shivaram Vs. State of A.P.**¹ and in **K.Emanuel Vs. State of A.P.rep. by its Public Prosecutor, Hyderabad**².

Accordingly and in the result, the Criminal Petition is allowed by quashing the proceedings in C.C.No.237 of 2007 on the file of the Addl.Judl.Magistrate of First Class, Avanigadda. The petitioner is acquitted and his bail bonds shall stand cancelled.

Consequently, the pending miscellaneous petitions in this Criminal Petition shall stand closed.

Date:22.08.2017
vvr

Dr. B.SIVA SANKARA RAO J,

¹ (2007)(3) B Cr.C.298

² (2013) 2 ALT 228 AP