

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

**CRIMINAL PETITION Nos.9870, 11107, 10019 AND
11181 OF 2010**

COMMON ORDER:

Out of the four quash petitions, Criminal Petition No.9870 of 2010 filed by A2 and A3 by names Smt.Gavithri Bai and Sri R.Balaji and Criminal Petition No.11107 of 2010 is filed by A1 and A4, Viz., M/s.Brahmani Infrastructures, represented by its Managing Partner and G.P.A. M.Sekhar and M.Niranjana Babu and also said M.Sekhar, of STC No.31/2010 on the file of Judicial First Class Magistrate, Vayalpad, Chittoor District, which is outcome of private complaint of the 2nd respondent to the two petitions for the offence punishable under section 138 N.I. Act for dishonour of cheque bearing No.693573, dated 31.03.2009.

2. Similarly, the quash petitioners in criminal petitions 11181 of 2010 and 10019 of 2010 are respectively A1 and A4 and A2 and A3 of STC.No.32/2010 on the file of Judicial First Class Magistrate, Vayalpad, Chittoor District, for the offence punishable under section 138 N.I. Act, which is outcome of private complaint of the self same complainant D.Sudhakar Reddy – 2nd respondent for dishonour of the cheque bearing No.693574 of 31.03.2009.

3. The contentions in the four quash petitions respectively are that there is no offence made out under Section 138 of the

N.I. Act against any of the petitioners A1 to A4 in any of the two cases and they are nothing to do with the alleged issuance of cheques and there is no any debt or other liability much less legally enforceable debt or other liability and none of the petitioners A2 to A4 are signatories and they are nothing to do with A1 even and the said STC Nos.31 and 32 of 2010 are liable to be quashed against them.

4. The learned counsel for the petitioners/accused reiterated the same in the course of hearing, whereas it is the submission of the counsel for the 2nd respondent – defacto complainant of the two cases that the cognizance taken is valid and there is nothing to interfere but for the accused to face trial for the cheques issued for the legally enforceable debt/other liability from the same presented dishonoured by 'stop payment' within the meaning of dishonour and from the statutory notice issued and on failure to pay from the approval of cause of action, complaints maintained and was taken rightly cognizance and thereby sought for dismissal saying all the accused are liable to face trial.

5. It is important to peruse the respective complaint cases of STC 31 and 32 contents. The same A4 is the developer/GPA of A1 and A2 and also Managing Director of A1 – M/s.Bramhani Infrastructures and A4 on behalf of A1 and A2 and as G.P.A. holder of them, entered into development agreement/GPA with A4 for development of

survey Nos.56 and 60 part, bearing plot Nos.9 and 10 of an extent of 446.42 square meters of Puppalguda Revenue Village. The accused A1 to A4 representing the complainant that A1 and A2 are absolute owners of the property in question and A4 is the Managing Partner of A1 and also GPA holder and believing them, the complainant agreed to purchase the property for Rs.28,36,400/- and paid Rs.5,00,000/- advance and for the balance amount to pay in two instalments and to obtain sale deed and the terms are covered by sale agreement dated 16.07.2008. Later complainant paid in September, 2008 Rs.10,00,000/- and in October, 2008 approached to pay Rs.13,36,400/- in demanding A4 to execute sale deed for which A4 represented that there are disputes regarding the property and the other accused have no valid title and agreed to return the said amount of Rs.15,00,000/- to the complainant with interest. Further accused A1 to A4 agreed to sell plot No.203 for a consideration of Rs.29,00,000/- on 18.08.2008 and received advance of Rs.5,00,000/- and out of the balance payable in two instalments as per the sale agreement terms dated 18.08.2008, later paid in September 2008, Rs.10,00,000/- and get ready with Rs.14,00,000/- in October 2008 and when demanded, they were postponing saying there are disputes regarding title to the property. Complainant conducted panchayati through elders Sanjeeva Reddy and G.Premanatha Reddy of Hyderabad and in the Panchayati,

elders directed to pay Rs.30,00,000/- for the two sale agreements amounts and accused agreed to pay Rs.10,00,000/- by cash and Rs.10,00,000/- into bank account of complainant and issued cheques of Rs.5,00,000/- each four in number viz., 312972, 312973, 693573 and 693574, drawn on HDFC Bank, Hyderabad, putting date as 31.03.2009, the post dated four cheques and A4 obtained receipt from the complainant for the cheques issued in relation to the refund of the amount covered by the two agreements in question.

6. Later as per the settlement, accused paid Rs.10,00,000/- to the complainant's HDFC Bank account on 02.04.2009 and when complainant presented the cheques bearing No.693573 and 693574, the same were returned dishonoured with endorsement of 'stop payment'. A4 again requested the complainant to present the cheques to be honoured and the same were presented again on 20.05.2009, that were returned dishonoured with endorsement of 'stop payment'. The dishonour of the cheques issued by A4 is with active connivance of A1 to A3 without funds in the account of the accused, which is nothing but cheating and deception and thereby issued notice for which even they failed to pay. Hence, the complaints.

7. A perusal of the two cheques covered by the two cases, which are subject matter of the four quash petitions show

that the cheques were signed on behalf of M/s.Brahmani Infrastructures and there are signatures of Sekhar (A4) and also of Gavithri Bai (A2), but for no signature of Sri Balaji (A3) husband of said Gavithri Bai.

8. Even from the complaint averments of the two cases, there is nothing to show Balaji (A3) is any way drawer of the cheques or responsible for any day to day affairs of A1 firm much less as partner.

9. Thus, but for to quash the proceedings against A3 in the two cases by partly allowing Criminal petitions No.10019 in relation to STC 32 of 2010 and 9870 of 2010 in relation to STC 31 of 2010, there is nothing to interfere with the cognizance order but for to observe all defences left open to the accused during trial.

10. Accordingly and in the result, while dismissing the criminal petitions 11107 and 11181 of 2010 in toto and 9870 of 2010, in so far as two accused, besides Smt.Gavithri Bai in STC 31 of 2010 and 10019 of 2010 in so far as her in STC 32 of 2010; the Criminal petitions 9870 and 11181 of 2010 are partly allowed, quashing the proceedings only against Balaji (A3) in STC 31 and 32 of 2010 respectively, which is without prejudice to the defence of them during trial.

DR.B.SIVA SANKARA RAO, J

21.08.2017
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