

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.732 of 2018

ORDER:

The petitioner is the accused in C.C.No.384 of 2017 on the file of the learned II Additional Judicial First Class Magistrate, Bhimavaram. Respondent No.2 is the *de facto* complainant. It is outcome of Crime No.70 of 2017 dated 04.04.2017 registered for the offence punishable under Section 420 IPC. The police after investigation filed the charge sheet that was taken cognizance for the offence supra by the learned Magistrate. Impugning the same, the present Criminal Petition is filed.

2. A perusal of the F.I.R. in registration of the crime shows that the *de facto* complainant is running a blood bank in the name of ASN Raju Charitable Trust in Juvvalapalem Road, Bhimavaram. The accused-B.Siva Prasad, R/o. Suryaraopet, Vijayawada, is running Bethesta blood bank. The accused as Director of said blood bank entered into a written agreement with the *de facto* complainant on 29.06.2016 stating that he was in need of Rs.11.00 lacs to arrange as loan without interest to repay in two instalments and he is the accused handing over the blood bank running by him with equipments for that amount in written and taken said amount on that day. However, later on verification found the equipments of the blood bank of the accused not in proper condition to run the blood bank, thereby the agreement was cancelled on 29.07.2016 and entered another agreement under

which Rs.11.00 lacs received by the accused to pay half of it (Rs.5.50 lacs) by 10.10.2016 and remaining half by 31.12.2016 and executed a promissory note for Rs.5.50 lacs on 10.10.2016 and another promissory note for Rs.5.50 lacs on 31.12.2016 and thereafter, on 15.10.2016 he paid only Rs.5.50 lacs and taken back the agreement dated 29.06.2016, and on 31.12.2016 for Rs.5.50 lacs due not paid given only two cheques each of Rs.2.75 lacs and written on the back side of the promissory note dated 31.12.2016. When he found the dates were not mentioned on the cheques in a deceitful manner by given the cheques not duly filled, when the complainant personally and through Srinivas Raju demanding to pay the amount, he was not paying and sending the messages with assurance to pay by coming over to Bhimavaram. Hence, to take action.

3. What was the equipment taken to run for Rs.11.00 lacs loan interest free till repayment even found deficit, two promissory notes as per the subsequent agreement dated 29.07.2016 executed by the accused to the complainant and thereby, till then there is no any offence of cheating. Even from that subsequent agreement dated 29.07.2016 to pay Rs.5.50 lacs by 10.10.2016 he admittedly paid Rs.5.50 lacs by 15.10.2016 with four days delay. So far as the second amount payable by 31.12.2016 is concerned, he executed another promissory note dated 31.12.2016 to pay and did not pay and issued two cheques each for Rs.2.75 lacs on 31.12.2016. Even from that what the cheques not cleared and those cheques were not duly filled

and for the demands to pay including through Srinivas Raju postponing with promise to pay by come over to Bhimavaram, from that on face value of the F.I.R. averments there is no offence of cheating including from the investigation material, from which the police filed charge sheet that was taken cognizance. Thus, the proceedings, which are purely civil in nature and added with criminal flavour, no way survive and the continuation of proceedings is nothing but abuse of process.

4. Accordingly and in the result, this Criminal Petition is allowed and the proceedings in C.C.No.384 of 2017 on the file of the learned II Additional Judicial First Class Magistrate, Bhimavaram, are hereby quashed. The bail bonds of the petitioner-accused, if any, stand cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

10.12.2018
MVA

Dr. B. SIVA SANKARA RAO, J