THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.8217 OF 2014

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioner-accused seeking to quash the proceedings against him in C.C. No.155 of 2014 on the file of the Additional Judicial Magistrate of First Class, Karimnagar, in connection with Crime No.252 of 2013 of Karimnagar I Town Police Station, Karimnagar, registered for the offence under Section 420 I.P.C. and Section 156 Cr.P.C.

2. Heard the learned counsel for the petitioner-accused, the learned Assistant Public Prosecutor for the 1st respondent-State and the learned counsel for the 2nd respondent-*de facto* complainant, apart from perusing the material on record.

3. Learned counsel for the petitioner-accused would submit that having issued a statutory notice to proceed against the petitioner-accused for the offence under Section 138 of the Negotiable Instruments Act (N.I.Act), as there are material alterations in the subject promissory note, the 2nd respondent-*de facto* complainant did not proceed against the petitioner-accused for the offence under Section 138 of the N.I.Act, but a false complaint is filed under Section 200 Cr.P.C. without there being sworn affidavit and got the matter referred to the police concerned; on reference, the police has registered the same in Crime No.252 of 2013 and filed a charge sheet for the offence under Section 420 I.P.C.; there are no ingredients of Section 420 I.P.C. to proceed against the petitioner-accused.

4. Learned Assistant Public Prosecutor opposed the grant of relief sought for by the petitioner-accused.

5. Learned counsel for appearing for the 2nd respondent-*de facto* complainant would submit that there is specific allegation that the petitioner-accused committed default in payment of cheque amount, i.e., Rs.14,50,000/-; even in spite of issue of notice to pay the cheque amount, it was not paid and the petitioner-accused did not maintain balance in his bank account to defeat the claim of the 2nd respondent-*de facto* complainant; there is intentional deception straight from the beginning; and ultimately, prayed to dismiss the petition.

6. In view of the contentions putforth by both sides, the point for determination is, whether the proceedings against the petitioner-accused in C.C. No.155 of 2014 on the file of the Additional Judicial Magistrate of First Class, Karimnagar, can be quashed?

7. The case of the 2nd respondent-*de facto* complainant is that the petitioner-accused borrowed hand loan of Rs.14,50,000/- from the *de facto* complainant on 14.10.2012 to meet his family and business needs and executed a promissory note and receipt was passed evidencing the said transaction agreeing to repay the same within three months. On repeated demands by the 2nd respondent-*de facto* complainant, the petitioner-accused issued a cheque bearing No.933800 dated 14.02.2013 drawn on Karur Vysya Bank Limited, Karimnagar. The cheque was presented on 14.02.2013 and it was returned to the 2nd respondent-*de facto* complainant on 15.02.2013 stating 'funds insufficient'. The 2nd respondent-*de facto* complainant got issued legal notice on 09.03.2013 to pay the amount within 15 days. Even then, the petitioner-accused did not pay the said amount. There is specific mention in the legal notice dated 09.03.2013 issued on behalf of the petitioner-accused that the petitioner-accused intentionally and deliberately failed to maintain sufficient funds in

his account and did not pay the cheque amounts. As seen from the entire material placed on record, there is alleged money transaction between the parties to the litigation and to discharge the debt, the petitioner-accused has given a cheque for Rs.14,50,000/- on 14.02.2013. The cheque was dishonoured for want of sufficient funds in the account of the petitioner-accused. The contention of the petitioner-accused is that the suit promissory note is materially altered. It is apt to extract the provisions of Section 420 I.P.C. as hereunder:

> "**Section 420 I.P.C. Cheating and dishonestly inducing delivery of property** — Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

8. It is apt to refer the decision of the Apex Court in **S.W.Palanitkar and others v. State of Bihar and another**[1], wherein it is held as follows:

> "In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. it is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating."

9. The above view in **S.W.Palanitkar's** case (1 supra) was referred to and followed by the Apex Court in **Rashmi Jain v. State of U.P. and another**[2]. In the instant case, it cannot be said that there is

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[1] AIR 2001 SC 2960 = (2002) 1 SCC 241
[2] (2014) 13 SCC 553

dishonest intention on the part of the petitioner-accused from the beginning or deceitful means on the part of the petitioner-accused to obtain alleged loan amount. Even there is no mention of any dishonest intention on the part of the petitioner-accused in the legal notice dated 09.03.2013 issued to recover the cheque amount and in default to proceed under Section 138 of the N.I.Act. Even if the allegations made in the complaint are taken as true, they do not constitute the offence of cheating. It cannot be held that there is dishonest intention on the part of the petitioner-accused in obtaining the loan amount from the inception. The dispute between the parties to the litigation is civil in nature. Further, there is no sworn statement accompanying the complaint filed before the learned Magistrate. There are no circumstances constituting the offence under Section 420 I.P.C. Therefore, the continuation of the proceedings against the petitioner-accused in C.C. No.155 of 2014 would be abuse of process of law and as such, the proceedings are liable to be quashed.

10. Accordingly, the Criminal Petition is allowed and the proceedings against the petitioner-accused in C.C. No.155 of 2014 on the file of the Additional Judicial Magistrate of First Class, Karimnagar, are quashed. Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

19th February, 2018

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