

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Criminal Petition No.1888 of 2018

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioner/accused No.1, seeking to quash the proceedings in C.C.No.234 of 2017 on the file of the VII Additional Chief Metropolitan Magistrate, Bheemunipatnam, Visakhapatnam District (arising out of Crime No.551 of 2016 on the file of P.M.Palem Police Station, Visakhapatnam District, registered for the offences under Sections 403, 406 & 420 of I.P.C.)

2. Heard the learned counsel for the petitioner/accused No.1, learned Assistant Public Prosecutor representing the 1st respondent-State and perused the record.

3. The learned counsel for the petitioner/accused No.1 would submit that disputes between the parties to the litigation had arisen in view of the business dealings among them. As per his submissions, these disputes are required to be determined by a competent civil Court. Even though the petitioner/accused No.1 had filed a private complaint under Section 200 of Cr.P.C. before the Magistrate concerned against the de-facto complainant herein and others and the learned Magistrate referred the same to the police under Section 156(3) of Cr.P.C., the police concerned have not issued the First Information Report. However, on a report lodged by the de-facto complainant herein, this crime is registered and investigated into. Thereafter, the Investigating Officer filed charge-sheet against the petitioner/accused No.1 and others for the

offences under Sections 403, 406 & 420 of I.P.C. There are number of documents to show that the de-facto complainant has to seek his remedy before a competent civil Court. The Apex Court also observed the same in many cases. In support of his contentions, learned counsel had relied on a decision of the Apex Court in State of Haryana Vs. Bhajan Lal¹ and ultimately prayed to allow the application.

4. The learned Assistant Public Prosecutor contended that the police concerned, after investigation, filed charge-sheet against the petitioner/accused No.1 and others for the offences under Sections 403, 406 & 420 of I.P.C. and the same is registered as C.C.No.234 of 2017 on the file of the VII Additional Chief Metropolitan Magistrate, Bheemunipatnam, Visakhapatnam District. The petitioner/accused No.1 has also the remedy before the Criminal Court to file an application for discharge. It is not appropriate to quash the proceedings and ultimately prayed to dismiss the application.

5. In view of the submissions made by both the learned counsel, the point for determination is whether the proceedings in C.C.No.234 of 2017 on the file of the VII Additional Chief Metropolitan Magistrate, Bheemunipatnam, Visakhapatnam District, can be quashed.

6. The petitioner/accused No.1 has been relying on a number of documents and correspondence between the parties to the litigation, contending that if at all the petitioner/accused No.1 or any other accused is indebted to the de-facto complainant etc., the same is

¹ 1992 Supp (1) SCC 335

required to be agitated before a competent civil Court. As contended by the learned Assistant Public Prosecutor, the petitioner/accused No.1 is entitled to file an application before a competent criminal Court to discharge him from the criminal proceedings. When a specific remedy is available to the petitioner/accused No.1 before a competent criminal Court to get the proceedings terminated, it is not appropriate to meticulously examine the record and determine that the dispute between the parties to the litigation is civil in nature and quash the proceedings. The contentions put forth on behalf of both the sides can be elaborately dealt by the Court below and the Court below is entitled to determine the cause in accordance with law and procedure established. No specific observation is made in this case with regard to the accusations levelled against the petitioner/accused No.1. The petitioner/accused No.1 is granted liberty to raise all the contentions now raised, before the criminal Court to determine whether the petitioner/accused No.1 is entitled for discharge or not.

7. Granting such liberty, this Criminal Petition is disposed of.

Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

19th February, 2018
Bvv

Dr. SHAMEEM AKTHER, J