HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No. 3276 of 2011

ORDER:

This Criminal Petition is filed, under Section 482 Cr.P.C, to quash the proceedings in C.C.No.948 of 2010 on the file of X Additional Chief Metropolitan Magistrate, Secunderabad.

The respondent - complainant, a registered company incorporated under the provisions of the Companies Act, 1956, is engaged in the business of providing telecom services including telephone services, mobile services, broadband, long distance services etc. under the brand name 'AIRTEL' by virtue of licence agreement with the Department of Telecom Services, Ministry of Telecommunications, Government of India, New Delhi. The complainant authorized its Assistant Manager to lodge criminal complaint on behalf of the Company. In order to promote and market its services under the brand name 'AIRTEL', it needs the services of entities/ associates/ franchises at different locations to cater to the needs of its subscribers. In the course of its business, when the complainant was looking out for a franchisee, petitioners approached and assured that they possessed necessary infrastructure, man power and financial capabilities to perform the functions, accordingly, an agreement styled as 'Franchisee Agreement' was entered on 14.08.2002 and, thereafter, 'Airtel Relationship Centre Agreement (ARC)' was entered into between the parties. As per the agreement, the accused were obligated to provide the following services:

i. To obtain post – paid Cellular Mobile Phone Services Subscriptions and other related Cellular Mobile Phone Services of complainant under the brand name Airtel, on the terms and conditions contained in the agreement.

ii. Maintain stocks of merchandise in sufficient quantity at the outlet arranged by accused.

iii. To identify the potential customers and make available to them the services of providing SIM cards by obtaining the subscriptions.

iv. To promote the post-paid business interest of complainant.

v. To assist complainant in various promotional schemes identified and launched by it.

vi. To assist in advertising the post-paid products and services of complainant.

vii. To supply periodical reports, returns and other information relating to the products and services, market conditions, customers taste and preferences and such other information as may be of interest to complainant.

viii. To maintain proper books of accounts and records relating to the transactions and allow inspection thereof by complainant or any other agency nominated it.

ix. To make/remit the payments collected by accused from the customers to complainant promptly.

The accused was obligated to make payments collected from the customers for various services. In the course of business, the petitioners collected huge amounts from the customers and, as on 18.09.2009 an amount of Rs.16,09,110/- was due and accused No.2, towards part payment of outstanding amount, issued the following cheques:

S	Cheque Amount	Cheque Dt. & No.	Name of Bank
1.	Rs.1,01,337/-	9-7-09/368446	HDFC Bank Ltd.
2.	Rs. 71,542/-	9-7-09/368439	HDFC Bank Ltd.

3.	Rs.1,99,000/-	27-6-09/368431	HDFC Bank Ltd.
4.	Rs.1,75,136/-	1-7-09/368440	HDFC Bank Ltd.
5.	Rs.3,05,804/-	16-6-09/464617	HDFC Bank Ltd.
6.	Rs.5,57,129/-	23-5-09/464580	HDFC Bank Ltd.
7.	Rs.1,99,162 /-	26-7-09/464619	HDFC Bank Ltd.

When the complainant presented cheques for clearance with its banker, the same were returned for 'Funds Insufficient' and got issued statutory notice dated 26.09.2009. Thereafter, the accused got issued legal notice purporting to terminate the agreement and also made many false allegations. The complainant got issued reply. The petitioners, having collected an amount of Rs.16,09,110/- from the subscribers of the complainant – Company, failed to remit the same and, therefore, a private complaint was lodged, under Section 200 Cr.P.C, before the IX Additional Metropolitan Magistrate and the learned Magistrate referred under Section 156 (3) Cr.P.C. to police for investigation. The police registered the case in Crime No.290 of 2009 on 20.10.2009 and the same was numbered as C.C.No.948 of 2010.

Learned Counsel for the petitioners mainly submits that, as per the agreement dated 31.10.2007 entered into between the parties, if any dispute arises, the matter has to be referred for arbitration. Reference was made to clause 23(1) of the Airtel Relationship Centre Agreement wherein it was stated that the disputes arising out of this agreement between the parties in connection with performance or non-performance of the rights and obligations set forth herein or the breach, termination, invalidity or interpretation thereof shall be referred for arbitration in terms of the Arbitration and Conciliation Act, 1996; prior to submitting the disputes to arbitration the parties shall resolve to settle the dispute through mutual negotiation and discussions; and, in the event the said disputes are not settled within 30 days, the same shall finally be settled and determined by arbitration in accordance with the Arbitration and Conciliation Act, 1996. Learned counsel, while placing reliance on the above clause, submitted that as the dispute pertains to the transactions arising out of agreement, respondent ought to have referred the matter for arbitration but, instead filed a private complaint.

Learned counsel for the respondent – complainant refers to clause 21.3 of the Airtel Relationship Centre Agreement which reads as under:

> Notwithstanding what is stated herein above, AIRTEL shall have the sole right to terminate the Agreement forthwith by giving notice in writing addressed to ARC at its last known address, in case (i) the Lease Agreement entered by AIRTEL for the Licensed Premises is terminated by the AIRTEL and/or landlord/owner of Licensed Premises or; (ii) of happening or occurrence of events including but not restricted to the following:
>
> a) Prosecution for any criminal offence of the partner/s, director/s, sole proprietor etc. of ARC.

Learned counsel for the respondent, relying on the above, clause would submit that the accused having collected Rs.16,09,110/- from the customers on behalf of the Company are supposed to deposit the amount on the next day by 11.00 a.m. but they have not deposited that amount and, therefore, non-deposit of amount clearly shows intention of misappropriation and are liable for prosecution.

Learned counsel for the petitioners submit that petitioners got issued notice to complainant – Company informing that they sustained huge losses and want to terminate the contract and, in spite of intimation by petitioners, complainant – Company deposited the cheques given towards security without intimating them and, as such, petitioners are not liable for prosecution under Section 138 of the Negotiable Instruments Act, 1881.

It is pertinent to note that, during the course of arguments, learned counsel for the petitioners submitted that cheques given by the petitioners towards security were deposited by complainant – Company without intimation and, in case, there is any dispute, they ought to have referred to arbitration and ought not to have lodged complaint against the petitioners.

Arguments of the learned counsel for the petitioners can be considered only at the time of trial. The question of fact cannot be decided in this Criminal Petition. Unless the evidence is brought on record, it cannot be proved as to how many cheques were issued by the petitioners to the respondent – Company; whether blank cheques were issued towards security; and whether those blank cheques were deposited for collecting amounts from the petitioners.

All these are questions of fact could be considered only during trial. The scope under Section 482 Cr.P.C. is limited. The allegations would show that there is a prima facie case. The contention of the petitioners that the case is of civil nature cannot be accepted.

The Criminal Petition stands dismissed giving liberty to the petitioners to raise all the pleas before the Trial Court.

Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

Date:02.04.2018
Note:CC as expeditiously as possible.
bo
Usd