

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.12566 of 2016

ORDER:

The petitioner is A.2 in CC.No.738 of 2015 on the file of learned II Additional Chief Metropolitan Magistrate, Hyderabad, taken cognizance for the offences punishable under Sections 420, 418 & 406 IPC, outcome of the private complaint of the 2nd respondent entity M/s. Bhageriya Financial and Capital Services Limited represented by its MD Om Prakash Bhageriya.

2. The sum and substance of the accusation from the private complaint taken cognizance by the learned Magistrate for the offences supra against the 2 accused including the petitioner/A.2 besides A1 are that the complainant entity lent to A.1 on 19.07.2001 an amount of Rs.15,000/- vehicle finance to purchase Bajaj Chetak CDEBHD engine No.05814 with which A.1 purchased the vehicle and for the said lending payable in 10 equal installments of Rs.1,800/- per month by A.1, A.2 petitioner stood as guarantor and they failed to pay even single installment including with no reply to legal notice dated 28.01.2002 issued to both accused, complainant came to know A.1 sold the vehicle and had wrongful gain by causing wrongful loss to the complainant. The petitioner A.2 is only a guarantor and the vehicle hire purchase finance sanctioned is to A.1, the vehicle purchased and in possession of A.1 only and mere non-payment of installment as

guarantor that too by A.2 for A.1 in the lending no way constitute any criminal liability much less offence of criminal breach of trust or cheating so far as the petitioner/A.2 concerned but for at best any offence from the entrustment under hire purchase by ownership with the financier till liquidation and not with the principal borrower in possession at best attracts only against A.1 and not at all against A.2 even taken into consideration on face value of allegations for A.2 liability as a guarantor in the event of principal debtor failed to pay is pre-dominantly civil in nature and no offence of cheating or criminal breach of trust that attracts.

3. The complainant cannot add a criminal flavour to the civil dispute by abusing the process so far as the petitioner/A.2 concerned and law is fairly clear in this regard from the expression of this Court in **Vesa Holdings Private Limited & another Vs. State of Kerala**¹.

4. The complainant even served failed to attend.

5. Heard learned counsel for the petitioner/A.2 and learned Public Prosecutor and perused the material on record.

6. Having regard to the above and in the result, this Criminal Petition is allowed by quashing the proceedings so far as the petitioner/A.2 concerned in CC.No.738 of 2015 on the file of learned II Additional Chief Metropolitan Magistrate,

¹ (2015) 8 SCC 293

Hyderabad, accused is acquitted and the bail bonds of the accused if any stands cancelled.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 05.12.2018
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