HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No. 2641 OF 2011

ORDER:

1. This Criminal Petition is filed under Section 482 Cr.P.C., to quash the proceedings in CC.No.742 of 2007 pending adjudication on the file of learned V Metropolitan Magistrate, at Hyderabad.

2. The contention of the petitioners/accused is that they are running the business in the name and style of 'Frontline Soft Limited', whereas the respondents 2 and 3/complainants are running the business in the name and style of 'Ad Age Securities. The allegations in the complaint that in the month of March, 2000, the petitioners/accused approached respondents 2 and 3/complainants and requested to advance loan of Rs.65.00 lakhs agreeing to repay the same in four years with interest at the rate of 24% per annum and the respondents 2 and 3/complainants gave the said amount by way of six cheques and the petitioners/accused pledged 6,50,000 shares towards security with respondents 2 and 3/complainants are false and incorrect. It is further stated in the complaint that in spite of several remainders, as the petitioners/accused unable to refund the loan amount, respondents 2 and 3/complainants lodged a complaint with the police which was registered as FIR No. 584 of 2003. It is contended that after investigation, the police filed final report on 5.9.2003 referring the case as 'civil in nature'. After receiving the notices from the trial Court, respondents 2 and 3 filed protest petition. It is further contended that after recording the statements of third respondent, the trial Court took the cognizance of the complaint and registered the same as CC No. 742 of 2007. It is also contended that for the amount lent by respondents 2 and 3/complainants, the

petitioners/accused transferred 2,25,000 shares in the name of Syed Musharaf Mehdi-third respondent under delivery instructions memos and that the share certificates and other documents relied on by the police are not disputed by respondents 2 and 3/complainants. Further, the contention of the petitioners/accused is that continuance of criminal proceedings against them is not only abuse of process of law but also mala fide in nature.

Per contra, the contention of respondents 2 and 3/complainants is that M/s Ad Age Securities is their partnership concern represented by third respondent-Syed Musaharaf Mehdi. The petitioners were undisputedly running the firm in the name and style of 'Frontline Soft Limited' registered under the provisions of the Companies Act; that the petitioners/accused are entrepreneurs running the said company for the purpose of software development business and they are running Call Centers and giving services to various companies in the United States of America; that in the month of March, 2000, the petitioners/Accused approached them (respondents/complainants) requesting to advance loan of Rs.65.00 lakhs for the purpose of expansion of their business and that the petitioners/accused agreed to return the said amount within four years with interest at the rate of 24% per annum and also promised that they would pledge the shares of their company-Frontline Soft Limited towards security as against the said loan amount.

Believing the words of the accused/petitioners, the second respondent-firm issued six cheques drawn on State Bank of India, Old MLA Quarters Branch, Hyderabad. The petitioners/accused deposited those cheques in different accounts maintained by them in Oriental Bank of Commerce, Ameerpet, Hyderabad and misappropriated the cheques amount. To create confidence in the minds of respondents/complainants, in the month of April, 2002, the petitioners/accused issued 6,50,000 shares of their company to the respondents/complainants towards security as against the loan amount advanced. The petitioners/accused misappropriated the amounts obtained from them (respondents/complainants) by cheating and making false representations. When the shares of Frontline Soft Limited were good, the petitioners/accused never tried to deliver the shares as agreed upon and when the shares of the said company were proved to be worthless, the petitioners/accused sent the same to complainants. Therefore the actions of the petitioners/accused clearly fall within the definition of cheating as stipulated in Section 415 IPC.

3. Now the point that arose for determination is

“ Whether there is prima facie material to prosecute the petitioners?”

4. Learned Counsel for the petitioners contended that the amount of Rs.65.00 lakhs was paid towards cost of the shares which were transferred to the DMAT account of Syed Musharaf Mehdi, second respondent herein at his request vide letter dated 18.11.2002; as such question of cheating does not arise.

5. Per contra, learned Counsel for second and third respondents contended that the petitioners borrowed the hand loan of Rs.65.00 lakhs agreeing to repay the same with interest at 24% per annum within four years and shares pledged by the petitioners towards security as against the loan amount were proved to be worthless and

therefore the petitioners at the inception had intention to cheat the respondents 2 and 3/complainants.

6. The undisputed facts spell out from the material placed on record show that Sri Syed Musharaf Mehdi is one of the subscribers of holding 100 equity shares. The complainant-Syed Musharaf Mehdi is one of the ten largest share holders of Front Line Soft Limited holding 1,25,000 shares equivalent to 1.23% of share holdings. The certificates issued by CIL Securities Limited show that said Syed Musharaf Mehdi is holding 450000 shares of Frontline Soft Limited in his name and another set of 125000 shares in the joint account of Musharaf Mehdi and Syed Iqbal Mehdi. As per the each delivery instruction memo dated 24.10.2000 and 18.11.2000, 225000 shares were transferred in the name of Syed Musharaf Medhi. The alleged letter dated 18.11.2002 issued by Syed Musharaf Mehdi shows that he requested the petitioners/accused to transfer the shares to his DMAT account.

Further it is not in dispute that respondents 2 and 3 paid Rs.65.00 lakhs to the petitioners and it was admittedly acknowledged by the petitioners herein. The only contention of respondents 2 and 3 is that Rs.65.00 lakhs was paid to the petitioners as hand loan by way of cheques and that the petitioners issued shares of their company towards security as against the said amount and the said shares were proved to be of worthless and that with an intention to cheat, the petitioners misappropriated the amount.

7. In the case of ***R.KALYANI Vs. JANAK C. MEHTA*** {(2009) 1 SCC 516} the Apex Court held that it is well established principle that every Court has inherent power to act *ex debito justitiae* to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court. It was further held therein that

one of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

8. In ***ALPIC FINANCE LIMITED Vs. P.SADASIVAN AND ANOTHER*** { (2001) 3 SCC 513}, the apex Court held that when somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form the basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have a right to sue for damages or compensation and at the same time law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. It was further held therein that to deceive is to induce a man to believe that a thing is true which is false and when the person practicing the deceit knows or believes to be false. It must also be shown that there exists a fraudulent and dishonest intention at the time of commission of the offence. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay the debt, he does not necessarily evade the debt by deception.

9. In another decision in ***CHANDRAN RATNASWAMI Vs. K.C.PALANISAMY AND OTHERS*** {(2013) 6 SCC 2013} the Apex Court held that the doctrine of abuse of process of Court and the remedy of refusal to allow the trial to proceed is well established and a recognized doctrine both by the English courts and courts in India. The wholesome

power under Section 482 Cr.P.C entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers both in civil and criminal matters to achieve a salutary public purpose.

10. In the instant case, as discussed herein above, there is no dispute that respondents 2 and 3 paid Rs.65.00 lakhs to the petitioners/accused by way of cheques. The material now placed before this Court and the final report filed by the police after thorough investigation go to suggest that respondents 2 and 3 paid Rs.65.00 lakhs to the petitioners by way of cheques. Absolutely there is no material placed by respondents 2 and 3 showing advancing of loan to the petitioners. The alleged cheques mentioned herein above show payment of amount towards the allotment of shares which were transferred in the name of second respondent-Syed Musharaf Mehdi in pursuance of his letter dated 18.11.2002 and delivery instructions memos. Pursuant to the payment of said amount, share certificates were also issued and instructions memos show transfers of shares. There is absolutely no piece of paper showing that the shares were transferred to the second respondent as security for the alleged loan amount of Rs.65.00 lakhs. More so, the petitioners having received Rs.65.00 lakhs transferred the shares to the DEMAT account of second respondent-Syed Musharaf Mehdi as per delivery instructions and pursuant to his letter dated 18.11.2002. Thus absolutely there is no piece of paper to show that the petitioners at any stage or at the inception of receiving Rs.65.00 lakhs have intention to cheat or deceive respondents 2 and 3. The Investigating Officer after thorough investigation filed the final report rightly stating that

the dispute involved in the present case is civil in nature and that no prima facie case for the alleged offences under Section 420 and 406 IPC is made out. The learned Magistrate while taking cognizance of the alleged offences and filing of protest petition by respondents 2 and 3 did not apply his mind in proper perspective as to whether the material on record shows any prima facie case for the alleged offences under Sections 420 and 406 IPC. Respondents 2 and 3 also preferred an application under Sections 397 and 398 of the Companies Act before the Company Law Board which was disposed of observing that the petitioners therein (respondent No.2 herein and another) are at liberty to initiate appropriate action under the relevant provisions of the Act redressing their grievance, if so advised.

11. In the facts and circumstances discussed hereinabove, I am of the definite view that respondents 2 and 3 who are complainants have paid Rs.65.00 lakhs to the petitioners towards the value of shares which were issued in the name of second respondent-Syed Musharaf Mehdi and accordingly the shares were transferred to the DEMAT account of Syed Musharaf Mehdi pursuant to his letter dated 18.11.2002 and delivery instructions memos. Respondents 2 and 3/defacto complainants did not place any material showing that the alleged amount of Rs.65.00 was paid as hand loan and the shares were pledged towards security as against the said amount and that the alleged shares became worthless later. No prudent man would think that the shares of any company will fall and its value will be reduced, but the fact remains that the decrease or increase of share value would depend on market fluctuations. Respondents 2 and 3 have neither placed any piece of paper showing that they advanced Rs.65.00 lakhs to the petitioners as hand loan nor they proved that the petitioners pledged their shares towards security as against the loan amount nor they established that the petitioners/accused at the very

inception of receiving Rs.65.00 lakhs had an occasion to deceive or cheat respondents 2 and 3/complainants.

12. In such circumstances, this Court has no option except to hold that the complainants/respondents 2 and 3 herein have manipulated and misused the process of Court by filing the complaint. Even the version of respondents 2 and 3 that petitioners borrowed the hand loan of Rs.65.00 lakhs agreeing to repay the same with interest at 24% per annum within four years and that they have furnished 6,50,000 shares towards security as against the said amount, itself is said to be civil in nature. Hence, allowing the criminal proceedings arising out of C.C.No.742 of 2007 to continue would be an abuse of the process of Court and therefore, for the ends of justice, such proceedings shall be quashed.

13. For the foregoing discussion and in the result, the Criminal Petition is allowed and the proceedings in C.C.No.742 of 2007 pending adjudication on the file of learned V Metropolitan Magistrate, at Hyderabad are hereby quashed.

14. Miscellaneous petitions pending consideration, if any, in the Criminal Petition shall stand closed in consequence.

JUSTICE N. BALAYOGI

Dated 11th October, 2018.
Msnr