

SMT JUSTICE T.RAJANI

CRIMINAL PETITION No.11889 OF 2011

ORDER:

This petition is filed seeking for quash of the proceedings against the petitioner, who is the accused, in C.C.No.830 of 2010 on the file of the Court of I Additional Chief Metropolitan Magistrate at Nampally, Hyderabad. The offences alleged are under Sections 379, 420, 465, 468 and 471 IPC.

2. Heard the counsel for the petitioner and the Public Prosecutor appearing for the 1st respondent as well as the counsel appearing for the 2nd respondent.

3. The complaint is filed stating that there are business transactions between the complainant and the accused and that the accused initiated proceedings under Section 138 of N.I.Act stating that a cheque was issued by the complainant for Rs.2,20,000/- towards discharge of the debt, in connection with the business transaction and that the cheque was dishonoured for want of sufficient funds and demanded payment of the amount. The contention of the complainant therein is that the cheque was lost by her and that she intimated the same to the Bank and she verified with the banker and the letter issued by her is very much available with the banker.

4. The counsel for the petitioner submits that earlier, after filing of the complaint for the offence under Section 138 NI Act by the petitioner herein, the respondent sought for transfer of

the said case by way of Tr.CrI.P.No.234 of 2009 before this court and this court granted interim stay of all further proceedings in the said CC. Later the said case was transferred, as sought for by the complainant, and in the said petition she never averred that the cheque was committed theft of by the petitioner.

5. Moreover, the cheque return memo is not on the basis of the signature not tallying, but it was returned on the ground of insufficient funds. Hence, even if it is assumed that the cheque was lost, it cannot be stated that it was committed theft of by the petitioner herein. Moreover, it appears from the complaint itself that the matter between the parties was taken before the Arbitrator and an award was passed by the arbitrator. Hence, it is possible that the cheque might have been issued by the borrower.

6. Hence, all the background facts of this case would strongly suggest that the contents of the complaint are invented only for the purpose of avoiding the amount, which is due to the petitioner. In view of the above, this court opines that continuation of further proceedings against the petitioner would be an abuse of process of law.

7. With the above observations, the Criminal petition is allowed and the proceedings in C.C.No.830 of 2010 on the file of the Court of I Additional Chief Metropolitan Magistrate at Nampally, Hyderabad, against the petitioner are hereby quashed.

As a sequel, the miscellaneous applications, if any, shall stand closed.

JUSTICE T. RAJANI

October 3, 2018
LMV

