SMT. JUSTICE T.RAJANI

CRIMINAL PETITION No.4145 of 2013

ORDER

This criminal petition is filed under Section 482 Cr.P.C., seeking to quash the proceedings in C.C.No.287 of 2013 on the file of the III Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, registered for the offence under Section 138 of Negotiable Instruments Act, 1881, against the petitioner/accused.

2. Heard learned counsel for the petitioner and the learned Public Prosecutor for the second respondent-State. None appears for the first respondent, in spite of service of notice.

3. The complaint is filed alleging that the accused was introduced to the complainant through land brokers, stating that the accused was a landlord having huge properties, but due to lack of initial amounts, his properties are under minor litigations with third parties and if certain amounts were invested, he will get huge amounts, and in turn, all the brokers including the accused made the complainant to belief that her investments will fetch big amounts, and that with the criminal intention to cheat huge hard earned amounts and to knock away the money from the complainant, freely, made a big plan to dupe the complainant. All the land brokers approached the complainant, gave all false promises on the investment over the alleged properties of accused. It is also alleged that under coercion, fraud and cheating, the complainant invested and purchased all the properties for huge amounts and the accused

had executed the agreement of sales for some properties, which do not belong to him. The accused issued four cheques for Rs.1 crore for the investment made for his land, to clear the litigations. While so, when the complainant tried to ask the accused at his house in a very friendly manner, he threatened her not to come to his house. Hence, the complaint.

4. This Court perused the Memorandum of Understanding made between the parties. According to it, the complainant had knowledge about the properties being under litigation. A perusal of the same would show that the properties are under some illegal encroachments or under occupation of third parties without having any right or title over the said properties. There was an undertaking that the petitioner/accused, who was in need of financial assistance to get the illegal encroachments, cleared or removed or evicted, had approached the complainant and accordingly, after having thorough discussion, the complainant gave support to the accused financially. Even, there was an undertaking on the same day, to the effect that the petitioner has obtained loan of Rs.1 crore from the complainant to meet financial assistance to clear the properties and he undertook to repay the said amounts as early as possible, after the properties are cleared. The petitioner/accused issued four cheques in advance towards security, with a condition that they should be returned after clearing the borrowed amount.

5. The fact of memorandum of understanding between the parties is admitted in the vacate stay petition filed by the

complainant. Hence, it is very clear that the cheques were issued towards security, with a condition that they should be returned after the amounts of the complainant were returned, which has to be done only after clearing the disputes.

6. Learned counsel for the petitioner submits that as the disputes are still pending, presentation of cheques by the complainant during subsistence of the agreement is against the memorandum of understanding between the parties and it would not amount to legally enforceable debt. He placed reliance on the ruling of this Court in **Lakshmi Prabhakar v. Satya Venkata Srinivasa**[1], wherein it was held at paragraph No.9 as under:

> "The consequences of not getting the personal guarantees and properties released are stated in the agreement itself. As on this day, the liability of the 1st respondent/complainant consequent on failure of the petitioner to get the personal guarantees and securities released is not crystallized. To attract Section 138 of the N.I.Act, firstly, the liability must be crystallized. After crystallization of the liability, if the cheques issued as a security are presented, the drawer cannot avoid further consequences. Since the liability is not crystallized as on the date of issuance of the cheques, it cannot be said that the cheques are issued towards discharge of legally enforceable debt or liability".

The facts of the present case are similar to the facts of the aforesaid case.

7. In view of the above, this Court finds that continuation of further proceedings would only be an abuse of process of the Court.

8. In the circumstances, the Criminal Petition is allowed, quashing the proceedings in C.C.No.287 of 2013 on the file of III

[1] LAWS (APH) 2013 652

Additional Chief Metropolitan Magistrate, Hyderabad, against the petitioner/accused. Miscellaneous applications, if any, pending in this criminal petition shall stand closed.

T. RAJANI, J

29th October, 2018.

sj