

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.8090 of 2011

ORDER :

This Criminal Petition, under Section 482 Cr.P.C., is filed by the petitioner/sole Accused to quash the proceedings initiated against him in Crime No.355/2010 of Chilkalguda Police Station, Secunderabad, for the offences punishable under Sections 420 and 406 IPC.

The brief facts of the case of the prosecution are that, the 2nd respondent/complainant is carrying on a chit fund business in the name and style of "EKTA CHIT FUNDS" in Secunderabad. The petitioner/sole Accused was a subscriber of chit in Group No.EG-24 and was allotted Ticket No.16 for a chit value of Rs.5.00 Lakhs and the duration of the said chit was 20 months with a monthly subscription of Rs.25,000/-. The chit was commenced on 18.07.2007 and would end by 14.02.2009. The petitioner became the successful bidder of the said chit in 4th month and received the bid amount. But, he failed to pay the monthly subscriptions from 14th to 20th months, and issued a cheque bearing No.580576, dated 11.12.2009 for an amount of Rs.1,75,000/- drawn on ICICI Bank Limited, Secunderabad. The cheque presented in the Bank on 13.12.2009 was returned vide Cheque Return Memo dated 14.12.2009 with an endorsement "INSUFFICIENT

FUNDS". Therefore, the 2nd respondent/complainant got issued a Statutory notice dated 31.12.2009 through registered post stating that the petitioner with a malafide intention has issued the said cheque without having sufficient balance in his account and sought for payment of the amount. On receiving the said notice, the petitioner got issued a reply notice dated 15.01.2010. The petitioner, after paying an amount of Rs.20,000/- in cash and an amount of Rs.10,000/- through banker's cheque bearing No.996518, dated 16.02.2010, has got issued a second reply notice dated 24.02.2010 stating that he was ready to pay the balance amount, if they provide him the particulars of the instalments payable by him. The 2nd respondent, however, without pursuing the proper course of action available under law, has filed the present private complaint. The complaint has been referred to the police for investigation and the same was registered as Crime No.355/2010 of Chilkaiguda Police Station, Secunderabad, for the offences punishable under Sections 420 and 406 IPC.

Heard learned counsel for the petitioner and the learned Public Prosecutor appearing for the 1st respondent-State. Though Sri D. Hanumantha Rao, counsel entered appearance on behalf of the 2nd respondent/complainant, no arguments have been advanced on his behalf.

Learned counsel for the petitioner submits that the petitioner became the successful bidder of a chit value of Rs.5,00,000/- and he could not pay the last five instalments having received the bid amount. Learned counsel for the petitioner submits that the petitioner is engaged in the business of supply of material, like tents and crockery and his business premises was acquired by the Government during road widening and, therefore, he could not pay the last five instalments. It is further submitted that the petitioner had no intention right from the beginning to defraud the complainant, that with a genuine intention, he joined as a subscriber of a chit and became a successful bidder, and after receiving the bid amount, he paid the remaining instalments as usual. As his shop was acquired by the Government in the road widening, he could not pay last five instalments. The cheque issued by the petitioner was dishonoured, as he could not keep sufficient balance due to the acquisition of his shop. The complainant, instead of proceeding under Section 138 of the Negotiable Instruments Act, had filed the present private complaint, which is nothing but an abuse of the process of law.

In support of his contention, learned counsel for the petitioner relied upon a decision of this Court in M/s. NARNE

ESTATES PRIVATE LTD. v. Dr. E. SURENDER RAO¹, where in para-8 it was observed as follows:

“Every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a civil Court but a breach of trust with mens rea gives to a criminal prosecution as well.

The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged (ii) of any legal contract made touching the discharge of such trust.”

Placing reliance on the above decision, learned counsel for the petitioner submits that as the petitioner had no intention right from the beginning to defraud the complainant, the offences punishable under Sections 406 and 420 IPC are not attracted and, therefore, the petitioner is entitled for quashing of the proceedings against him.

The learned Public Prosecutor appearing for the 1st respondent-State submits that the ingredients of Sections 420 and 406 are not present in this case as the transaction pertains to a chit fund business and the petitioner happened to be subscriber of a chit.

¹ 2006 (3) ALT (Crl.) 231 (A.P.)

Having regard to the submissions made by the learned counsel for the petitioner and in the light of the observations of this Court in M/s. NARNE ESTATES's case (supra), it is obvious that every breach of trust may not result in a penal offence of criminal breach of trust, as the act of breach of trust involves a civil wrong in respect of which a civil action can be initiated. A breach of trust with *mens rea* is an important aspect to attract the provisions under Sections 406 and 420 IPC. In this particular case, the petitioner is subscriber of a chit. He became the successful bidder and received the bid amount. However, he could not pay the last five instalments, for which he has issued a cheque, which was dishonoured because of insufficiency of funds. For dishonour of cheque, the 2nd respondent/complainant has got the remedy of approaching the appropriate Court under Section 138 of the Negotiable Instruments Act. Instead of resorting to the said remedy, the 2nd respondent/complainant has filed the present private complaint against the petitioner, which is nothing but an abuse of the process of law and hence, the petitioner is entitled for quashing of the above proceedings against him.

Accordingly, this Criminal Petition is allowed by quashing the proceedings against the petitioner/sole accused in Crime No.355/2010 of Chilkalguda Police Station,

Secunderabad, registered for the offences punishable under Sections 420 and 406 IPC.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

21.03.2018

NOTE: L.R. Copy be marked.
(B/O)
Msr



HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.8090 of 2011



21.03.2018
Msr

THE HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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%21-03-2018

#Syed Vikaruddin ... Petitioner

Vs.

\$The State of A.P., rep. by its
Public Prosecutor and another ... Respondents

! Counsel for the petitioner : Sri G. Ashok Kumar Reddy

^Counsel for the respondents : Public Prosecutor (TS) (R.1)
Sri D. Hanumantha Rao (R.2)

<GIST :

>HEAD NOTE :

? CITATIONS : 2006 (3) ALT (Crl.) 231 (A.P.)

