

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.3736 of 2014

ORDER :

The petitioners are A.1 to 3 in C.C.No.368 of 2016 on the file of the II Addl.Chief Metropolitan Magistrate, Nampally, Hyderabad, outcome of Cr.No.287 of 2012 of the Police Station, Abids Road, Hyderabad, dt.10.09.2012 registered for the offences punishable u/ sec.420 read with 120-B IPC based on private complaint of the complainant that was referred to police for investigation by the learned Magistrate in registration of the crime for the offences supra from which after investigation the police filed chargesheet that was taken cognizance which is now impugned.

2. The contentions in the quash petition vis-à-vis oral submissions in seeking to quash the proceedings in the above Calander Case are that the A.1, pretending as he is in urgent need of money, offered to sell his property situated at Kundanpally village, Keesara Mandal, Ranga Reddy district in Sy.Nos.126,130 and 131 admeasuring Ac.3.12guntas for total sale consideration of 45lakhs to the complainant and the complainant after verification found that the property is in FTL and sought for clearance certificate for which the accused assured to get the same within six months, on that there was Memorandum of Understanding (MOU), dt.28.10.2009 and the accused failed to produce clearance certificate despite request of the complainant and the A.1 issued 3 post-dated cheques and assured that they will honour the same and the A.1 also given undertaking however said cheques were dishonoured vide cheque return memo dt.03.12.2010 and after statutory notice,dt.20.12.2010, u/ sec.138 of the Act, for which the accused sent reply denying execution of MOU supra, by setting up of an allegation of he was taken handloan of 2lakhs and as a security the complainant obtained original title deeds of property and misused the same, the cheque dishonour case C.C.No.65 of 2011 was filed before the II Addl.Chief Metropolitan Magistrate, Nampally, Hyderabad and

it was ended in conviction and it is alleged that there was offence of cheating in filing the private complaint that was referred to police for investigation and filing of chargesheet and its taking cognizance which is in fact a bar under law, leave apart there is suit O.S.No.1056 of 2012 on the file of the X Addl.District Judge, Ranga Reddy district, L.B.Nagar pending in relation to the same transaction and for this Court there is nothing to interfere with the allegations in the cheque bouncing case as the same is different from the alleged present case of cheating.

3. Heard the learned counsel for the petitioners/ A.1 to A.3 and the learned Public Prosecutor representing the State and perused the material on record.

4. A perusal of the record shows the cheque bouncing case filed as C.C.No.65 of 2011 for the offence u/ sec.138 of the Act by the complainant S.Ashok Kumar, 2nd respondent herein against the A.1 V.Chandraiah saying in relation to the property transaction covered by the agreement and MOU that was not performed. The 3 post-dated cheques issued were returned dishonoured and despite statutory notice not paid. The judgment of the trial Court, dt.23.12.2011 in C.C.No.65 of 2011 in convicting the accused shows he was sentenced to undergo Simple Imprisonment for one year and to pay a fine of Rs.5000/- with default sentence of Simple Imprisonment for a period of three months. The documents marked include original property documents viz; pattadar passbook, Pahani, cheques in question, statutory notices covering the facts referred supra in relation to the property transaction.

5. In fact, on its face, it is a dispute of civil nature and the very agreement is with regard to requirement of clearance certificate and from that there is no offence of cheating to attract Section 415 IPC to sustain the prosecution herein itself, leave apart even otherwise there is a bar on the same facts even for a different offence u/ sec.300 CrPC, to sustain said

private complaint referred to police by the learned Magistrate in registration of the crime and filing of charge sheet and taking cognizance and the Apex Court in Kolla Veera Raghav Rao Vs. Rorantla Venkateswara Rao¹ categorically observed that the appellant once having been convicted u/ sec.138 of the NI Act cannot be prosecuted u/ sec.420 IPC for the self-same state of facts because of the bar under Section 300 Cr.P.C.

6. Having regard to the above, the proceedings in the Calander Case supra no way sustain and thereby liable to be quashed.

7. In the result, the Criminal Petition is allowed by quashing the proceedings against the petitioners/ A.1 to A.3 in C.C.No.268 of 2016 on the file of the II Addl.Chief Metropolitan Magistrate, Nampally, Hyderabad, and they are acquitted. The bail bonds of the petitioners/ A.1 to A.3 shall stand cancelled.

Miscellaneous petitions pending if any, shall stand closed.

Date:31.12.2018
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Dr. B.SIVA SANKARA RAO J,

¹ 2011 2 SCC 703