HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.6456 OF 2015

ORDER:

This Criminal Petition, under Section 482 of Cr.P.C., is filed by the petitioner-accused seeking to quash the proceedings against him in C.C.No.276 of 2015 on the file of the I Metropolitan Magistrate at Vijayawada, Krishna District, for the offences under Sections 138 and 142 of the Negotiable Instruments Act (for short, 'the N.I.Act').

2. Heard the learned counsel for the petitioner-accused, the learned Additional Public Prosecutor appearing for the 1st respondent-State and the learned counsel for the 2nd respondent-complainant, apart from perusing the material available on record.

3. Learned counsel for the petitioner-accused would submit that the 2nd respondent-complainant filed the above Calendar Case to punish the petitioner-accused for the offences under Sections 138 and 142 of the Negotiable Instruments Act; the respondent-complainant is the classmate, close relative and childhood friend of the petitioner-accused; taking advantage of the intimacy and friendship, the 2nd respondent-complainant induced the petitioner-accused to start a partnership business under the name and style of "M/s. Sri Sai Balaji Enterprises" at Kanchikacharla; the partnership business was to supply building material for construction of houses; there is a deed of partnership executed by them on 25.11.2005; believing the words of the 2nd respondent-complainant, the petitioner-accused has handed over the management of above partnership firm to the complainant; in the course of business, the petitioner-accused gave cheque books and some blank cheque leaves singed by him to the complainant; the complainant filled up those cheques and presented the same; thereafter, it resulted institution of this Calendar

Case; the 2nd respondent-complainant also misappropriated the funds of partnership firm and purchased property in his name without the knowledge of the petitioner-accused and other partners; two lorries bearing Nos.KA-01-AA-7089 and KA-01-AA-7139 were purchased from the dealer M/s. Arvind Motors Limited, Bangalore, and they were registered in the name of the 2nd respondent-complainant and the petitioner-accused signed the documents as guarantor; those vehicles were financed by ING Logistics, Vijayawada, under loan agreements dated 26.07.2011 and monthly installments were fixed at Rs.71,903/-; the 2nd respondent-complainant suppressing the above facts, put up false sale letters of the said lorries; there is also a letter dated 30.10.2013 addressed to the Manager, ING Vysya Bank Limited, Vijayawada, stating that he has no interest to the said lorries; the impugned cheques are pressed into service to make illegal gain; on perusal of those cheques, it would reveal that the dates therein were typed recently; no amount is due to the 2nd respondent-complainant by the petitioner-accused; the subject lorries were transferred and registered in the name of NAP Logistics, which is a legal entity; the complaint is not maintainable; and ultimately, prayed to dismiss the application. In support of his contentions, learned counsel for the petitioner-accused relied on the following decisions:

(1) M/s. Inden Power International Ltd. v. Chandan Pandya and another[1].

(2) Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Limited and others[2].

(3) Bommidipati Madhavi v. State of A.P.[3]

4. On the other hand, learned Additional Public Prosecutor opposed the relief sought by the petitioner.

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[1] 2015(2) ALT (Crl.) 280 (A.P.)
[2] (2008) 13 SCC 678
[3] 2014(1) ALT (Crl.) (A.P.) 2 (S.B.)

5. The learned counsel for respondent No.2-complainant would submit that the complainant is the owner of the said two lorries; they were purchased by the petitioner-accused for valuable sale consideration; in the course of the purchase of the said lorries, the impugned cheques were given for Rs.20,00,000/- each on 09.01.2015 and those cheques were dishonoured; after due notice, the complaint is filed and it is numbered as C.C. No.276 of 2015 and pending for adjudication; and ultimately, prayed to dismiss the criminal petition.

6. In view of the contentions putforth by both sides, the point for determination is, whether the proceedings against the petitioner-accused in the impugned C.C. No.276 of 2015 are liable to be quashed?

7. As per the record placed before the Court, on19.02.2015, the 2nd respondent-complainant got issued a legal notice to the petitioner-accused under registered post. There is acknowledgement to show the service of the legal notice. The submission made on behalf of the 2nd respondent-complainant is that the petitioner-accused did not reply the notice, but approached him and requested him not to file any complaint for the offence under Section 138 of the N.I.Act. Learned counsel for the petitioner-accused would contend that the notice was not served and the impugned acknowledgment was not signed by the petitioner-accused. This aspect is required to be adjudicated in the course of trial. Merely on the statement of the petitioner-accused, it cannot be held that the notice was not served and the impugned C.C. is not maintainable. As per the material, the 2nd respondent-complainant is the owner of two lorries bearing Nos.KA-01-AA-7089 and KA-01-AA-7139 and the petitioner-accused came forward to purchase the same for Rs.20,00,000/- each. On 03.09.2014, the petitioner-accused purchased the lorries and sale letters

and transfer forms were executed. The petitioner-accused promised to pay Rs.40,00,000/- within six months. On 05.09.2014, the said lorries were transferred in the name of the accused. The contention advanced on behalf of the petitioner-accused is that the lorries are standing in the name of the NAP Logistics, which is a legal entity. It is submitted on behalf of the 2nd respondent-complainant that the petitioner-accused is the sole proprietor of the NAP Logistics and the impugned two cheques were given towards sale consideration of the lorries by the petitioner-accused. The petitioner-accused stated that no subject cheques were given towards sale consideration of the lorries. The petitioner-accused, 2nd respondent-complainant and others entered into a partnership under the name and style of "M/s. Sri Sai Balaji Enterprises" to carry on business of supply the building material. There is a partnership deed dated 25.11.2005 in connection with partnership firm. Believing the 2nd respondent-complainant, some blank signed cheques were given to him and also a cheque book was given to the 2nd respondent-complainant. Thereafter, those cheques were misused and the impugned complaint is brought into existence. These factual aspects require determination in the course of trial.

8. In **M/s. Inden Power International Ltd.'s** case (1 supra), this Court gave a finding after due trial and adjudication of factual aspects. The facts and circumstances of the said decision are quite different from the facts and circumstances of the case on hand and the same has no application to the instant case. **Suryalakshmi Cotton Mills Ltd's** case (2 supra) relates to the requirement of the criminal breach of trust and issue of blank cheques. Whether there was a criminal breach of trust, whether the 2nd respondent-complainant misused the blank cheques said to have been given by the petitioner-accused can only be determined after

recording the evidence. There are no similarities in the facts of the above decision rendered by the Hon'ble Supreme Court and in the instant case. In **Bommidipati Madhavi's** case, this Court held that when a notice is issued, as required under Section 138 of the N.I.Act, and when the respondent had not given reply to that notice, no adverse inference can be drawn.

9. As seen from the entire material placed on record and the submissions made by both sides, no opinion is required to be expressed at this stage with regard to the service of notice. Further no opinion is required to be given with regard to the business transactions between the parties to the lis and the defence set up by the petitioner-accused, it can be safely concluded that there is a *prima facie* case to proceed against the petitioner-accused in the impugned Calendar Case for the offence under Sections 138 and 142 of the N.I.Act. Under these circumstances, the petition is devoid of merit and it is liable to be dismissed.

10. In the result, the Criminal Petition is dismissed. Miscellaneous petitions, if any pending in this Criminal Petition, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date:19-03-2018

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