HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.5588 OF 2013

ORDER:

In this criminal petition, filed under Section 482 Cr.P.C., the petitioner/accused seeks to quash proceedings against her in C.C.No.01 of 2013 on the file of learned XII Special Metropolitan Magistrate, Hyderabad, registered for the offence under Section 138 of N.I.Act.

2. Heard learned counsel for the petitioner, Sri Vijay Ashrit and learned counsel for 2nd respondent/complainant, Sri Challa Ajay Kumar.

3. Briefly stating, the petition is filed on two main grounds.

a) Firstly that the disputed cheque leaf was not issued by her towards discharge of any legally enforceable debt to the complainant. In fact, the petitioner and the complainant are the sister and brother and in view of the close relationship and association between them, the respondent/complainant took advantage and entered into the house of the petitioner in her absence and has stolen away the cheque leaf and manipulated the same as if it was issued by her to him in respect of a legally enforceable debt. It is her case that she lodged a private complaint against the complainant and the same was referred to the police and registered as Crime No.57 of 2012 of Yemmiganur Police Station and the investigation is pending. Therefore, the continuation of the criminal proceedings against her in C.C.No.01 of 2013 would amount to abuse of process of the court.

b) Secondly and alternatively, it is argued that even as per the complainant, the cheque was obtained by the complainant from her for the amounts spent by him for obtaining gas dealership for Indian Oil Corporation in her name and in this regard, the respondent/complainant allegedly spent amounts for liaisoning the several officers and also for acquiring furniture and other interiors for the gas dealer office. Assuming, though not admitting, the said allegation to be true, the respondent/complainant spent some amounts to bribe the concerned officers for obtaining gas dealership and for realization of the said amounts, he obtained the subject cheque from her. Learned counsel vehemently argued that if that were to be true, the transaction would be squarely hit by Section 23 of the Indian Contract Act, as the purpose for which the complainant allegedly spent amounts and obtained the cheque from the petitioner/accused is against the public policy. On that count also, the C.C. is not maintainable in the eye of law. He thus, prayed to quash the proceedings.

4. In oppugnation, learned counsel for 2nd respondent/ complainant would argue that the cheque leaf was not stolen from the possession of the complainant as alleged and same is invented to avoid petitioner's liability. He would argue that

whether the cheque was issued in discharge of a legally enforceable debt or whether it was stolen by the respondent/complainant from the possession of the petitioner/accused is a question of fact, which can be determined only after full-fledged trial and not in this petition. He would further submit that in Crime No.57 of 2012, the respondent/complainant has not received any notice from the court or police and he is not aware of those proceedings and even if Crime No.57 of 2012 is pending investigation, that cannot be an obstacle for further proceeding in C.C.No.01 of 2013. Nextly, he would contend that the complaint allegations would not even remotely disclose that the respondent/complainant spent amounts for payment of bribes and on the other hand, he genuinely incurred expenditure on behalf of the complainant for obtaining gas dealership and he also spent amounts for acquiring the furniture and other interiors for the office to be established by the complainant and therefore, it is preposterous to dub the expenditure incurred by the complainant as towards payment of bribe. Therefore, the question of the case being hit under Section 23 of the Indian Contract Act does not arise. He, thus prayed to dismiss the petition.

5. The point for determination is 'whether there are merits in the petition to allow?'.

6. In the decision reported ***State of Haryana and others v. Ch. Bhajan Lal and others***[1], the Apex Court has laid down the following guidelines as to when the High Court can exercise its plenary powers under Section 482 Cr.P.C. to quash the criminal proceedings. They are:

> *"1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.*
>
> *2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
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> *3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
>
> *4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.*

[1] AIR 1992 SC 604

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

7. It has now to be seen whether, in the instant case, the complainant could make out a *prima facie* case for quashing of the criminal case No.01 of 2013, which, this Court is informed at the fag end.

8. I have carefully scrutinized the two grounds to which the petitioner adverted to. Admittedly, the petitioner and the respondent/complainant are the sister and brother. It is the case of the petitioner that she did never give any cheque, much less, the subject cheque for rupees twenty lakhs to the respondent/complainant in discharge of legally enforceable

debt and on the other hand, the said cheque leaf was stolen away by the respondent/complainant in her absence from her house as he gained access in view of the close relationship between the parties and the same was pressed into service. It is also her case that in that connection, the petitioner lodged a private complaint which was referred to the police and registered as Crime No.57 of 2012 by the police of Yemmiganur and investigation is pending. Be that as it may, as rightly argued by learned counsel for respondent/complainant, whether the cheque was issued for due discharge of legally enforceable debt or whether the same was stolen by the respondent/complainant is purely a question of fact to unravel the truth. However, in the limited enquiry under Section 482 Cr.P.C., it is not possible to determine the correctness of either of the parties. Therefore, on this ground, the criminal petition cannot be dismissed.

9. So far as the other contention of the petitioner is concerned, it is her case that, even according to the complainant, the amounts were spent by him for paying bribes in different offices and therefore, realization of bribe amount from her through the subject cheque would be against the public policy and therefore, on that ground, the criminal case is not maintainable. The respondent/ complainant squarely denies this allegation and his case is that he genuinely incurred certain expenditures and also incurred some other expenditure for purchase of furniture

and other interiors and therefore, he deserved that amount from the complainant, for which, she issued the subject cheque. This aspect is also a question of fact, which can be determined only after a full-fledged trial. At this stage, it cannot be ascertained whether the cheque was obtained for the realization of bribe amounts that have been paid by the respondent/complainant in various offices or towards the expenses he genuinely incurred for obtaining the gas dealership. Thus, at any rate, the points of argument raised by the petitioner/accused need thorough examination by the trial court during trial and not in this limited scope of enquiry under Section 482 Cr.P.C. I am told that the matter is at the fag end of the trial. In that view, while dismissing the criminal petition, the petitioner/accused is given liberty to substantiate her defence before the trial court by placing the cogent material.

10. Accordingly, the criminal petition is dismissed. The trial court is directed to dispose of the criminal case at the earliest not later than three months from the date of receipt of copy of this order.

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

U.DURGA PRASAD RAO, J

24.07.2018
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