

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition Nos.11880 and 11910 of 2011

COMMON ORDER:

In these Criminal Petitions filed under Section 482 Cr.P.C., the petitioner seeks to quash the proceedings against him in C.C.Nos.133 of 2011 (Old CC.No.1577 of 2010) and 132 of 2011 (Old C.C.No.1576/2010) on the file of IX Special Metropolitan Magistrate, Hyderabad registered for the offence under Section 138 of Negotiable Instruments Act, 1881 (for short "NI Act").

2a) The facts of the case are that the 2nd respondent/complainant filed private complaints before IX Additional Chief Metropolitan Magistrate, Nampally, Hyderabad against the petitioner alleging that he is the owner of the property bearing Nos.3-5-136 and 3-5-139 situated at Eden Garden Road, Ramkoti, Hyderabad in which petitioner was the tenant by virtue of lease deed dated 07.03.2003 and he issued two cheques bearing Nos.595570 and 595571 dated 20.07.2009 for Rs.7,100/- and Rs.2,500/- respectively drawn on ICICI Bank Limited towards payment of rent for the month of April, 2009. The complainant deposited the said cheques in his bank viz. Vijay Bank, Vijaynagar Colony, Hyderabad which were returned with the endorsement "funds insufficient". Then, the complainant got issued registered legal notices dated 16.01.2010 to the petitioner calling upon him to pay the amount covered by the said cheques within 15 days from the date of receipt of notice. In spite of

receiving the same the petitioner failed to pay the amount and hence he committed the offence under Section 138 of NI Act.

b) The learned Magistrate took cognizance of the same and registered as C.C.No.1577 and 1576 of 2010 and issued summons to the petitioner and later, on the point of jurisdiction the cases were transferred to IX Special Metropolitan Magistrate, Hyderabad and re-numbered as C.C.Nos.133 and 132 of 2011 respectively.

Hence, the instant Criminal Petition at the instance of petitioner.

3) Heard arguments of Sri P.Shiv Kumar, learned counsel for petitioner in both the petitions and Sri Mirza Nisar Ahmed Baig, learned counsel for 2nd respondent and learned Public Prosecutor (TS) for 11st respondent.

4) Learned counsel for petitioner sought for quashment of two CCs. mainly on the submission that the 2nd respondent/complainant is not the owner of the two premises, which were taken on lease by the petitioner/accused. One Fazal Ahmad Khan, the paternal uncle of the 2nd respondent/complainant was the original owner of the premises and he executed two lease deeds in favour of petitioner/accused on 07.07.2003 through the 2nd respondent/complainant who was his GPA by then. Subsequently the said Fazal Ahmad Khan cancelled the GPA by issuing publication in Siasat Newspaper on 17.07.2009 and as such, on the date of presentation of cheques in question for clearance, the 2nd respondent/complainant was not the GPA holder of the lessor and

therefore he could not have presented the cheques for clearance. Hence, the 2nd respondent/complainant had no right to file the complaints. Learned counsel further argued that there were civil disputes between Fazal Ahmad Khan, the original owner of the premises and the 2nd respondent/complainant and some others wherein they entered into a compromise before the High Court whereunder the 2nd respondent/complainant has specifically gave up his rights in respect of two premises which were leased out to petitioner/accused and some other properties, though originally he claimed right in the leasehold premises and some other properties by virtue of gift settlement said to have been executed by Fazal Ahmad Khan. Subsequent to the compromise, Fazal Ahmad Khan was alone entitled to collect rents from the petitioner/accused. Accordingly, fresh lease deed dated 04.08.2009 was entered into between them. Therefore, on that ground the complainant had no right to lodge criminal proceedings against the petitioner/accused. Even otherwise, since the owner died and thereby the so-called GPA ceased, the complainant has no right to file complaints. He placed reliance on several decisions to buttress his argument that the complainant being the GPA has no right to file complainants. He thus prayed to quash the proceedings in two CCs.

5) In oppugnation, learned counsel for 2nd respondent/complainant argued that the complainant filed the two CCs. against dishonor of two cheques issued by petitioner/accused for the payment of rents in respect of leasehold premises and therefore, both the cases are maintainable

under law. Further, the complainant filed those CCs. in his own right as he got the properties by virtue of gift made by the original owner. Learned counsel argued that whether the gift was cancelled on an agreement is a question of fact which can be determined only after full-fledged trial in the criminal cases and the same cannot be decided in the quash petitions. He thus prayed to dismiss the petitions.

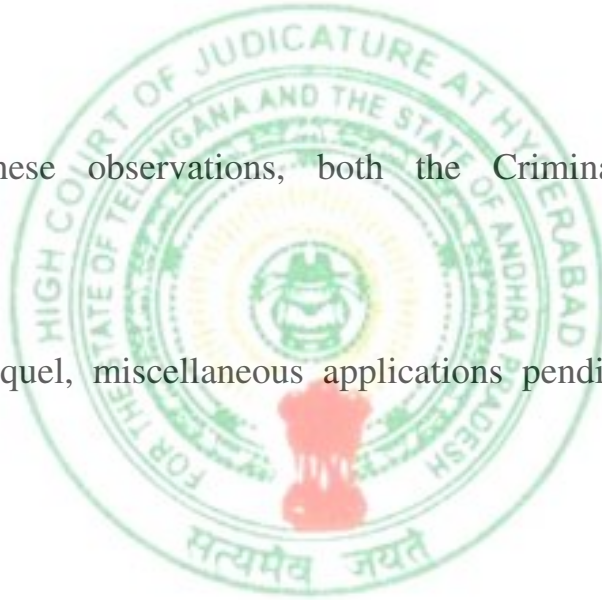
6) I find considerable force in the submission of learned counsel for 2nd respondent/complainant. As per the judgment in *State of Haryana and others vs. Ch. Bhajan Lal and others*¹ criminal proceedings can be quashed under the plenary powers of the High Court under Section 482 Cr.P.C. when the facts in FIR or criminal cases do not reveal any offence even if uncontroverted. In the instant case, two CCs. are filed by the 2nd respondent/complainant on the allegation that the cheques issued by the petitioner/accused towards payment of rent for the month of April, 2009 were bounced back due to *insufficient funds*. If the aforesaid allegations are not controverted, certainly the criminal cases are maintainable. The petitioner/accused seeks quashment of the proceedings on the plea that the original owner of the leasehold premises cancelled the GPA executed in favour of 2nd respondent/complainant and therefore, he has no right to file CCs. He seeks to quash the proceedings also on the ground that in the civil disputes between the original owner and the 2nd respondent/complainant a compromise was entered into whereby the 2nd respondent/complainant

¹ AIR 1992 SC 604

abdicated his so-called right in different properties including the leasehold premises which he claimed right under gift said to have been made by Fazal Ahmad Khan. The 2nd respondent/complainant denies these facts and claims an independent right in the leasehold premises. The veracity of the allegations and counter allegations made by the parties cannot be decided in the instant petitions as rightly submitted by learned counsel for 2nd respondent/complainant and they have to be decided after trial in the CCs. Therefore, petitioner/accused can vindicate his defence by appearing before the trial Court and facing the trial.

7) With these observations, both the Criminal Petitions are dismissed.

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



U. DURGA PRASAD RAO, J

Date: 23.11.2018
Murthy