HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL PETITION No.3728 of 2011

ORDER

This Criminal Petition is filed under Section 482 Cr.P.C seeking to quash the proceedings in C.C.No.1010 of 2010 on the file of the II Additional Chief Metropolitan Magistrate, City Criminal Courts, Hyderabad, insofar as petitioner-A6 is concerned.

02. Heard learned counsel appearing for the petitioner and learned Public Prosecutor appearing for the 1st respondent-State.

03. The brief facts of the case are that the petitioner was one of the Directors of M/s S.V.Jewellers Private Limited, which is dealing with jewellery business. Due to the differences between him and other directors, the petitioner had resigned to the said post on 12.06.2010, and that he is no way concerned with the business transactions of the said company from that date. Accordingly, he submitted Form No.32 before the Registrar of Company, which was also recorded. It is further stated that though there are eight directors, none of them have any access either to the purchases, sales, accounts, receipts or payments and that one A.Uday Kumar, who is the Managing Director, is looking after the day-to-day affairs of the said company. The said Uday Kumar used to keep all the cheque

books with him and obtained several signatures of the petitioner on blank cheques stating that if any one of the signatory is not available, the business of the said company will be affected. It is also stated that he has not signed any cheques with effect from 12.6.2010 as he resigned and left the company. While so, in the name of M/s. S.V.Jewellers Private Limited cheque bearing No.45120, dated 26.06.2010 for an amount of Rs.4,75,000/- drawn on Allahabad Bank, Balanagar Branch and cheque bearing No.055922, dated 3.7.2010 for an amount of Rs.20,74,121/- drawn on Axis Bank, Kukatpally, were issued to the 2nd respondent for purchase of gold and the said cheques were dishonoured. Hence, the 2nd respondent lodged a complaint under Sections 138 and 142 of Negotiable Instruments Act before the II Additional Chief Metropolitan Magistrate, Hyderabad, against M/s.S.V.Jewellers Private Limited and the same was taken on file and numbered as C.C.No.1011 of 2010 and the petitioner was arrayed as A6. In pursuance thereof, summons were issued to the petitioner as well as A2 to A5 and A7 to A9. As on the date of issuance of cheques either on 26.06.2010 or 03.07.2010, the petitioner-A6 is not the Director of the said company and is no way concerned with the claim and offence alleged to have been committed by the said M/s.S.V.Jewellers Private Limited. Hence, the

present petition is filed to quash the proceedings against the petitioner.

04. Learned counsel appearing for the petitioner submits that the 2nd respondent has not complied with the mandatory requirements of Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (for short 'the Act'), in as much as the notice said to have been issued by the 2nd respondent on 28.7.2010 was not received by the petitioner and that as the 2nd respondent has not made out any case much less prima facie case to proceed against the petitioner, the proceedings in so far as the petitioner-A6 is concerned, deserves to be quashed.

05. Learned Public Prosecutor contended that on the representation of A2 to A9, the 2nd respondent-firm believing their version showed him various types of jewellery pertaining to men and women; that A5 to A9 selected various women jewellery like necklace, ear rings, bangles, nose rings and jewellery being worn by the bride and they have shown keen interest in selection process of jewellery and appreciated the various designs and workmanship and assured the 2nd respondent that hereinafter they are going to be their permanent customers and would place more orders on various occasions like marriage seasons and festivals; that they

purchased jewellery worth Rs.25,49,121/- and issued two cheques pertaining to Allahabad Bank, Balanagar Branch and Axis Bank, Kukatpally Branch, assuring the 2nd respondent that all the cheques would be honoured on its presentation; that when the cheques were presented, they were dishonoured by the Allahabad Bank, Balanagar Branch, on 1.7.2010 and Axis Bank, Kukatpally on 17.7.2010 with an endorsement "insufficient funds"; that the said fact was brought to the notice of A2 to A9 and the 2nd respondent personally went to their shops and expressed his anguish over the accused failure to fulfill their commitment; that A2 to A9 gave evasive replies and assured the 2nd respondent that the matter would be settled amicably and the outstanding balance would be credited to his account, but thereafter, miserably failed in their further commitment; that the 2nd respondent issued legal notice on 28.07.2010 to A1 to A9 through registered post; that legal notices sent to A1 and A6 returned "not claimed", whereas notices sent to A2 to A5 and A7 to A9 were served on 30.07.2010; that there is a prima facie to proceed against the petitioner.

06. Perused the record and the material available on record. It is an admitted fact that based on the complaint lodged by the 2nd respondent-complainant, the Court below took

cognizance and numbered as C.C.No.1011 of 2010 for the offence punishable under Section 138 of the Act. Pursuant to which, summons were sent to the accused and the petitioner herein is arrayed as A6. It is also not in dispute that the petitioner is one of the directors of M/s S.V.Jewellers Private Limited. The allegation in the complaint is that in the month of July, 2010, all the directors of M/s S.V.Jewellers Private Limited, including the petitioner, visited the 2nd respondent's jewellery shop and represented that they are interested to do business transaction with the 2nd respondent-firm as it is a most reliable and established shop. A5 to A9 selected various types of jewellery and purchased jewellery worth Rs.25,49,121/- and issued two cheques bearing Nos.45120 and 055922 for an amount of Rs.4,75,000/- dated 26.6.2010 drawn on Allahabad Bank, Balanagar Branch and Rs.20,74,121/- dated 3.7.2010 drawn on Axis Bank, Kukatpally, respectively. It is also an admitted fact that the said two cheques were dishonoured on 1.7.2010 & 17.07.2010 with an endorsement "insufficient funds".

07. The petitioner is not disputing the dishonour of cheques. His contention is that he was not the Director of M/s S.V.Jewellers Private Limited. As on the date of issuance of cheques, he has resigned from the post of Director on

12.06.2010 and submitted Form No.32 also before the Registrar of Companies severing his relationship with the said company with effect from 12.6.2010. The said cheques were dishonoured on 1.7.2010 and 17.7.2010 respectively with an endorsement "insufficient funds". It is also alleged that notices were issued to the petitioner and A1 to A5 & A7 to A9 on 28.7.2010; that A2 to A5 and A7 to A9 received the notices on 30.7.2010; and that notices sent to A1 and A6 returned with an endorsement "not claimed".

08. The specific allegation in the complaint is that the petitioner along with other directors went to the 2nd respondent-jewellery shop, selected various items and purchased jewellery worth Rs.25,49,121/- and issued two cheques. The defence of the petitioner is that A.Uday Kumar, who is the Managing Director obtained his signatures and other directors on blank cheques in order to facilitate himself to deal with the business operations and payments payable by the said M/s S.V.Jewellers Private Limited. It is alleged that in good faith and trust, the said Uday Kumar obtained several signatures of the petitioner on blank cheques stating that if any one of the signatory is not available, the business of the said company will be affected and in order to enable himself to operate effectively, he desired the other signatory to sign on

the blank cheques so that , he will use the cheques and issue the cheques whenever it was required for his business operations. According to the petitioner, the said cheques to a tune of Rs.4,75,000/- & Rs.20,74,212/- were issued towards the amount due to M/s S.V.Jewellers Private Limited and they contain his signature and other directors, but on its presentation, the said cheques were dishonoured on 1.7.2010 and 17.07.2010. It is averred in the complaint that notices sent by the 2nd respondent on 28.07.2010 were received by the other accused and notice sent to the petitioner was returned with an endorsement "not claimed" and that the contention of the petitioner is that he has not received the said notice. It is also his contention that he is not director of the said M/s S.V.Jewellers Private Limited as on the date of purchase of jewellary from the shop of the 2nd respondent and on the date of issuance of cheques.

09. All these facts are to be decided during the course of trial. There is nothing in the criminal petition to suggest that the complainant abused the process of Court and cause any prejudice to the petitioner warranting to quash the proceedings.

10. In view of the above, I do not find any reason to quash the proceedings against the petitioner and hence, the criminal petition is liable to be dismissed.

11. Accordingly, the Criminal Petition is dismissed.

Miscellaneous petitions, if any, pending, shall stand closed.

HON'BLE SRI JUSTICE N.BALAYOGI

18th January, 2018
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