HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.11702 of 2018

ORDER:

The petitioner is the 2nd accused among 2 accused in CC.No.1317 of 2017 on the file of IX Metropolitan Magistrate, Kukatpally at Miyapur, where the learned Magistrate has taken cognizance for the offences punishable under Sections 406 & 420 IPC which is outcome of crime No.730 of 2017 dated 18.07.2017 from the report of the 2nd respondent-defacto complainant from the registration of the crime and investigation by examination of LW.1 to 4 including the defacto complainant, his brother and 2 friends in the crime registered by LW.5, charge sheet filed by LW.6 on completing investigation.

2. The sum and substance of the accusation shows from the FIR of the defacto complainant by name Bhupathiraju Venkata Rama Raju as software professional of Miyapur against that A.1-T.Nagarjuna Reddy and A.2-SN Shanti Reddy W/o said A.1 and A.3-Bashrat Ahmed Khan of Gachibowli that A.1 & A.2 came to him through I.Prasada Raju. A.3 is an associate of A.1 & A.2. In view of the acquaintance of the 3 accused with complainant they hatched a conspiracy to extract the amounts from the defacto complainant by cheating and as a part of it in March 2015 by false representations to him with the say of they are in urgent need of Rs.50,00,000/- and would return soon from what he told of he can arrange only Rs.25,00,000/-, they stated can take, he paid Rs.8,00,000/- through ICICI bank

cheque and remaining by cash and at that time I.Prasada Raju and A.Ramakrishnam Raju LWs.3 & 2 were present, that the accused persons 1 to 3 by deceit and fraudulent means induced him to given the amount by him on 19.06.2015. Further their inducement made him to purchase 2 cars i.e., Toyota Prado No.AP-09-BZ-1800 and Mercedes Benz E250 No.TS-07-EG-0555 by securing loans in his name from ICICI and HDFC bank when they induced, by their promise to pay the installments promptly thereby they obtained not only the cash, but also the 2 cars and as part of their fraudulent and dishonest intention they induced him to enter into a settlement as per which the A.3 would clear the installments due to the bank regarding Toyota Prado car and paid advance Rs.1,00,000/- with undertaking to clear the installments and by believing that he entrusted the matter to A.3 to dispose it of and to clear the bank balance car loan and however, A.3 dispose of the car and did not clear the bank loan and misappropriated the amount without clearing the bank loan and acted contrary to his instructions and thereby they committed the offence, hence to take action as for repayment of the amount when he demanded them they threatened with dire consequences if he insists for repayment by causing alarm and fear.

3. The police investigation from the charge sheet shows besides what the complainant-LW.1 represented the same, the statements of LWs.2 to 4 at best in corroboration to it and nothing beyond. It is therefrom the present quash petition

seeking to quash the said cognizance order of the learned Magistrate so far as against petitioner/A2 of no offence made out and it is a civil nature of money transaction at best and continuation of proceedings tantamount to abuse of process.

4. R.2 even served failed to attend, hence taken as heard and heard learned Public Prosecutor also who has submitted in opposing the quash petition, that there are no grounds to quash the proceedings but for to submit any arguments while hearing before charges if no grounds to charge that too part-II case diary not even filed with charge sheet of what LWs.1 to 4 stated and there are no grounds to quash merely because the alleged offence of cheating outcome of money transaction when it is outcome of deception from the inception as from the averments.

5. The contentions in the quash petition mainly are that A.2 is not wife of so called T.Nagarjuna Reddy-A.1 as averred in the FIR and charge sheet. A.1 was the tenant in the ground floor of the house No.38-18, Rohini Colony, Neredmet, belongs to A.2 covered by rental agreement filed as part of the material. The other contention is she is wife of one Dr. Sudeep S/o. Ekanadam of Subedari Aparna Hospital, Hanamakonda, Warangal District. She obtained consent divorce from her husband after they blessed with baby Alekhya in their wedlock.

6. Heard and perused the material on record.

7. A perusal of the FIR and the charge sheet from the investigation supra shows there was a pure money transaction of Rs.25 lakhs lending by complainant to A.1 & A.2. What the

cheque for Rs.8 lakhs stated paid not even mentioned as to it is paid to A.2/petitioner, but for A.1 not even in any joint account of them if at all. Leave about even then it is only a money transaction and what all stated of allegedly make believe or lured to lend the amount and failed to pay, it is only breach of contract with civil liability for non-payment and not an offence of cheating. In so far as 2 cars, he purchased by availing loans from the banks concerned, it is not even his case that it is covered by any agreement between him and the accused No.2 in any manner in writing to make her any party for any inducement so to purchase in his name by availing bank loans to liquidate or she has taken any of the cars and made use, but for if at all against A.1 and at best further it is A.3 allegedly taken the car and sold away by deception and not A.2. A.2 is wife of Dr. Sudeep and their marital tie was dissolved covered by order dated 09.02.2015 in FCOP.No.457 of 2014. There is nothing to show there was any ceremony of marriage between A.1 & A2 either from the report or from the statement of the defacto complainant or 3 witnesses LWs.2 to 4 for pretending A.2 is wife of A.1. It is nothing but a false and baseless allegation in the absence of any proof of marriage between A.1 and A.2. No doubt there is combined anticipatory bail application of A.1 & A.2 in Crl.M.P.No.3053 of 2017 in the crime No.730 of 2017 that was granted by the order of the learned XV Additional Sessions Judge, Ranga Reddy District, Kukatpally at Miyapur, on 16.08.2017 where it is alleged of A.2 is wife of A.1

in the array by the petitioners in their bail application. Even taken therefrom that there was ceremony of marriage between A.1 and A.2 or they are living as such or the amount in cash and kind taken by them together to that extent there is no offence of cheating and so far as the complainant's purchase of the 2 cars and one of the cars sold by A.1 to pay installments to that it is A.3 that is made liable and at best as friend of A.1 from his involvement along with A.1 and nothing against so far as petitioner/A2 concerned. Thereby suffice to quash the proceedings in so far as the petitioner/A.2.

8. Accordingly and in the result, this Criminal Petition is allowed by quashing the proceedings against the petitioner/A.2 in CC.No.1317 of 2017 on the file of IX Metropolitan Magistrate, Kukatpally at Miyapur, accused is acquitted and the bail bonds of the accused, if any, shall stand cancelled.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 20.12.2018
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