

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.11067 OF 2017

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioners to quash the proceedings in C.C.No.371 of 2017 on the file of the XXI Special Metropolitan Magistrate, Erramanzil.

2. Heard the learned counsel for the petitioners, learned Assistant Public Prosecutor representing the 1st respondent-State and perused the record.

3. Learned counsel for the petitioners would submit that the impugned cheque was not given in discharge of the debt due to the respondent/complainant. One person Dharmesh Jariwala conspired with the de facto complainant and got filed the impugned C.C.No.371 of 2017 for the offence punishable under Section 138 of Negotiable Instruments Act. There is also a paper publication on 24.10.2015 made in Gujarat Mitra daily newspaper, which falsifies the story of the de facto complainant. The continuation of proceedings in C.C.No.371 of 2017 is an abuse of process of law. Learned counsel for the petitioners also submits that the petitioner is a senior citizen, aged 68 years and is suffering from diabetics and his personal attendance may be dispensed with.

4. As seen from the material placed on record, the de facto complainant M/s.A.R.Textiles is the wholesaler of artificial silk fabric and fancy silk fabric. A.2 is the retailer of cloth business and he is the proprietor of A.1 firm, viz., M/s.Roopmangal Stores. There is a day to day business transaction between both the parties. In view of

those transactions, the de facto complainant supplied artificial silk fabric and fancy silk fabric from 10.05.2016 to 25.05.2016 vide different invoices. In that process, the accused has fallen due an amount of Rs.81,65,585/- and 18% interest is chargeable on the outstanding money. When several demands are made, a cheque was given for the outstanding amount of Rs.81,65,585/-. When the said cheque was presented, the same was dishonoured. After due notice, the complaint was filed and ultimately it resulted in numbering C.C.No.371 of 2017. The de facto complainant has also filed number of documents showing the registration of their firm, copy of invoices, legal notice, etc., to substantiate his contention. In view of the same, it is difficult to hold that one Dharmesh Jariwala has conspired in filing of C.C.No.371 of 2017. The truth or otherwise and the publication made on 24.10.2015 are required to be adjudicated in due trial.

5. Under these circumstances, it is difficult to hold that the contentions raised are sustainable in law. There is nothing wrong in numbering C.C.No.371 of 2017 by the lower Court and proceeding therewith. There are no merits in the petition. If the petitioner has health hazards, he has remedies available under law. The remedy cannot be a petition to quash. The petition is devoid of merit and is dismissed accordingly.

6. 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: 12.03.2018
ssp