THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Criminal Petition No.10744 of 2017

ORDER:

This Criminal Petition, under Section 482 of Code of Criminal Procedure, 1973, is filed by the petitioners/A.2 and A.3, seeking to quash the proceedings in C.C.No.919 of 2015 on the file of the II Additional Junior Civil Judge – cum – XIX Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad (arising out of Crime No.963 of 2014 on the file of KPHB Police Station, Cyberabad, registered for the offences under Sections 420, 406 & 120-B of I.P.C.)

2. Heard the learned counsel for the /A.2 and A.3, learned Assistant Public Prosecutor representing the 1st respondent-State and perused the record.

3. The learned counsel for the petitioners/A.2 and A.3 would submit that the petitioners/A.2 and A.3 are innocent persons. They have nothing to do with the allegations made in the First Information Report and also in the charge-sheet. They have not given their bank account number to any one to deposit any money into their account. They are not connected with the alleged money transactions between the accused No.1 and the de-facto complainant. The de-facto complainant, having issued statutory notice to proceed against accused No.1 for the offence under Section 138 of Negotiable Instruments Act, 1881, did not choose to do so. There is no conspiracy, as alleged by the de-facto complainant. The petitioners/A.2 and A.3 did not cheat the de-facto complainant and ultimately prayed to allow the application.

4. The learned Assistant Public Prosecutor would submit that the petitioners/A.2 and A.3, along with accused No.1, conspired together

and dishonestly taken an amount of Rs.9,00,000/- from the de-facto complainant. There are no circumstances to quash the proceedings against the petitioners/A.2 and A.3 and ultimately prayed to dismiss the application.

5. In view of the contentions put forth by both the learned counsel, the point for determination is whether the proceedings in C.C.No.919 of 2015 on the file of the II Additional Junior Civil Judge – cum – XIX Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad, are liable to be quashed.

6. As per the records placed before this Court, the de-facto complainant and the petitioners/A.2 and A.3 are relatives. The petitioners/A.2 and A.3 are sons of accused No.1. Taking advantage of the acquaintance and relationship, accused No.1 approached the de-facto complainant in February, 2013 to lend an amount of Rs.9,00,000/- as hand loan, to meet his urgent business requirements. Accused No.1 promised to repay the same within the period of one year. In that process, the de-facto complainant lent an amount of Rs.5,00,000/-, depositing a sum of Rs.2,50,000/- in the bank account of petitioner/A.2 and another sum of Rs.2,50,000/- in the bank account of petitioner/A.3, on 11.02.2013. Both the transactions were bank transactions and made by way of cheques by the de-facto complainant. The de-facto complainant has given the details of deposit of money as mentioned above to the investigating officer and the same is reflected in his statement as well as in the charge-sheet filed. Thereafter, the de-facto complainant advanced an amount of Rs.4,00,000/- in cash to accused No.1 on 12.02.2013. The amount was not repaid, as agreed by accused No.1. Cheque given by accused No.1 for Rs.9,00,000/- was dishonoured. There are allegations that

accused No.1, along with petitioners/A.2 and A.3, conspired together and taking advantage of the acquaintance and relationship with the de-facto complainant, committed criminal breach of trust. There is also specific mention against the petitioners/A.2 and A.3 that they furnished their bank account details to the de-facto complainant. On that, the de-facto complainant deposited the aforementioned money in their bank account. There are also allegations against the petitioners/A.2 and A.3 that they made believe the de-facto complainant that they need money for their business purposes, whereas, the fact is otherwise. The petitioners/A.2 and A.3, with a *mala fide* intention, made wrongful gain and caused wrongful loss to the de-facto complainant. In view of the these circumstances, it cannot be held that there were no *mala fides*, conspiracy and criminal breach of trust. The truth or otherwise of the allegations made against the petitioners/A.2 and A.3 are required to be determined after due trial. There is no explanation from the petitioners/A.2 and A.3 with regard to credit of amounts in their bank accounts by the de-facto complainant. They cannot plead innocence with regard to deposit of the amount by the de-facto complainant. There are no circumstances to allow this application. The Criminal Petition is devoid of merit and is liable to be dismissed.

7. Hence, the Criminal Petition is dismissed.

Miscellaneous petitions, if any, pending in this Criminal Petition, shall stand closed.

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Dr. Shameem Akther, J

20th February, 2018
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