

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Revision Case No.3297 of 2018

ORDER :

The petitioner is the accused and the 1st respondent is the complainant in CC.No.541 of 2017, on the file of the XIX Special Magistrate, Erramanzil, Hyderabad, which is for the dishonour of the cheque bearing No.214113 for Rs.5,00,000/- dated 10.08.2017.

The averments in the private complaint are that, the cheque when presented, returned dishonoured and after statutory notice issued, even served, failed to make payment thereby from accrual of cause of action, the complaint to be taken on file to punish and the background of the facts for issuance of the cheque mentioned in the complaint in page nos.2 & 3, paras 1 & 2, para 8 in particular, are that, complainant entered into development agreement with the owners of property bearing MC.No.11-3-159, admeasuring 133 sq.yards, situated at Moazampura, Hyderabad, and as per the agreement, complainant was entitled to six flats viz., G-1, 201, 202, 301, 302 and 502. The accused approached the complainant in June, 2017 on behalf of his relative Mr.Mohd.Kamil Ali Mahmood of Nizamabad to purchase the flat G-1 on the ground floor for Rs.10,20,000/- (Rupees ten lakhs twenty thousand only) saying he will get some commission in not permitting direct transaction between complainant and the prospective purchaser Mahmood supra and offered to make payment of sale consideration through bank account for which complainant agreed and complainant executed sale deed in the name of said Mahmood on 29.06.2017 and accused issued two cheques of Rs.5 lakhs each viz., 214112 and 214113 drawn on SBH dated 10.08.2017 and 29.06.2017 and the two cheques were also mentioned in the sale

deed dated 29.06.2017 supra. One of the cheque for Rs.5 lakhs bearing No.214112 was encashed and the second cheque bearing No. 214113 was presented, was returned dishonoured for stop payment and later again presented the cheque and complainant received letters from accused on 09.08.2017 and 12.08.2017 through registered post wherein he admitted to have issued the cheques towards sale consideration, however by stating he got the payment stopped giving letter to bank as complainant failed to honour the agreement by way of handing over original title deeds, copy of building sanction plan and further failed to furnish pending works.

In the factual scenario averred, he has no right to stop payment saying the same is a condition of handing over the voucher documents etc. From this, in the course of trial, the accused filed the petition in CrI.M.P.No.2965 of 2018 by stating that it is a condition for the honour of the cheques of registered documents at least Xerox copies with approved plan, shall be issued to the accused by the complainant and when he approached the complainant, many a time for the documents, as requested by the vendee Mahmood, there was no response and thereby he issued letter to the bank to stop payment and in the cross-examination, complainant- PW1 admitted that he got all relevant documents and deposed as if he supplied to the petitioner and as per the petition further averments, he came to know that the respondent/complainant sold the flat to Mahmood by cheating. Hence to summon the respondent to produce the original documents.

The counter filed in opposing the petition by the complainant is with contest that the registered instrument of sale speaks about delivery

of original link documents. If at all any grievance, the vendee must take steps to get the original documents in case same not delivered and the same cannot be taken advantage to dishonor the cheque much less to compel to produce and even for argument sake it is admitted by complainant not given the link documents has no jurisdiction to enforce the clause mentioned in the registered instrument, but for remedy elsewhere. It is there from the impugned order of the learned Magistrate dated 16.10.2018 reads that, the main case filed is for dishonour of the cheque and we have to see only whether the cheque issued or not and for legally enforceable debt or other liability or not and dishonoured or not and if really accused/petitioner thought that respondent failed to comply the conditions to furnish the documents, he has to take steps otherwise for remedy elsewhere. Same may not mend herein.

Heard both sides.

Once even from the counter to the petition before lower court, leave about the complainant's evidence in the cross-examination as PW1, not in dispute about the condition as incorporated in the sale deed. Fairness requires for him to submit what he deposed in the cross-examination is, he has given the voucher documents and at the same breath, in prior line deposed that the original documents are with him. Once the original documents are with him, the question of his handing over to the accused to enforce the cheque does not arise. Thereby, as even can be seen from the counter, petition and the order of the lower court, these facts make clear, complainant in all fairness having to enforce the cheque for the sale consideration of the sale deed, no right to retain the original documents which are voucher documents to the sale deed, and the court

in the consideration of whether there is any legally enforceable debt or not, also entitled to consider the same that was imposed by the trial Court, leave apart, a party in possession of best evidence cannot withhold the same and that too what is the prayer in the petition is only to produce the documents before the court and not even to give once that is the requirement and admittedly in this position, he must produce before the Court, for the Court ultimately to decide the original documents are entitled to be returned either to the accused or to the vendee, who was introduced through Mohd. Ghouseuddin in execution of sale deed by complainant, as also laid down by Three Judge bench judgment of the Apex Court in this regard on parties different even no burden to produce the documents before the court in ¹***Gopal Krishnaji Ketkar Vs. Mahomed Hazi Latif & Ors.***

Accordingly, the petition is allowed with these observations.

Miscellaneous petitions if any, pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.05.02.2019
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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5th February, 2019

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