

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL REVISION CASE No.1174 OF 2011

JUDGMENT:

1. The petitioners have filed the present revision questioning the correctness of concurrent findings of the learned VII Metropolitan Magistrate, Hyderabad convicting the petitioners under Section 420 of IPC vide judgment dated 03.10.2008 in CC No.278 of 2005 and thereafter conviction being confirmed by the learned Metropolitan Sessions Judge vide Criminal Appeal No.328 of 2008, dated 23.05.2011.

2. Briefly, the case of complainant is that he was building contractor. The 2nd Petitioner approached him in the year 2001 for constructing building meant for medical college in Warangal and another medical college at Shameerpet village. The complainant invested in the construction work and also made constructions. The 2nd petitioner/A2 issued six post dated cheques and when the cheques were presented in the bank for encashment, they were dishonoured. The complainant issued legal notice on 25.11.2002. However, the 2nd petitioner approached the complainant and requested that

he would pay the cheque amount by 28.02.2003 and also executed an undertaking on 21.12.2002. The said cheques were again presented for clearance on 04.03.2003 and they were returned for the reason of 'insufficient funds'. Though notice was issued on 13.03.2003, payment was not made. For the said reason of dishonor of cheques, criminal complaint was filed for the offence under Section 420 of IPC.

3. The police having investigated the case, filed charge sheet for the said offence. Having framed the charge under Section 420 of IPC, learned Magistrate examined P.Ws.1 and 2 and marked Exs.P1 to P15 and found that the cheques Exs.P4 to P9 were issued by the 2nd petitioner. Thereafter m2nd petitioner requested the complainant not to proceed further and he would make good the payment covered by the cheques, for which reason, the complainant failed to file the case under Section 138 of the Negotiable Instruments Act. However, the said complaint was filed with a delay. When the petitioners herein questioned the complaint filed under Section 138 of Negotible Instruments Act before this Court vide Criminal

Petition No.5639 of 2005, this Court held that there is a prima facie case under Section 420 of IPC.

4. The main ground on which both the Courts below have convicted the accused is on the basis of the observations made by this Court in Criminal Petition No.5639 of 2005, which reads as follows:

“After going through the contents and ingredients of section 420 IPC knowing fully well that the prosecution cannot be maintained thirty days after waiting period from the date of issuing of notice, the accused approached him dishonestly making a request to wait till 4.3.2003 promising that he would repay the amount. In view of the above circumstances, I find that there is a prima facie case for the offence u/sec.420 IPC. Therefore, the prosecution in respect of section 420 IPC is not liable to be quashed.”

5. To attract an offence under Section 420 of IPC, it has to be shown that the accused entertained the fraudulent intention from the inception. Admittedly, there were money transactions in between the accused and the complainant regarding construction. Having paid in part and construction being undertaken in part, the cheques in question were issued which are Exs.P4 to P9.

6. However, the promise to make payment towards cheques will not amount to fraudulent misrepresentation. It is for the complainant to prosecute and file cases diligently. For the

reason of the accused promising to repay the amounts covered by the cheques, if the complainant fails to prosecute his case under Section 138 of the Negotiable Instruments Act, that will not amount to an offence of cheating. The transactions are in the normal course of business and either delayed or deferred payment or non payment would not attract penal consequences under Section 420 of IPC unless the ingredients are made out. Only for the reason of giving an undertaking to pay the amount covered by the cheques will not amount to an offence of cheating in the present facts and circumstances of the case.

7. In the said circumstances, the impugned judgment dated 03.10.2008 in CC No.278 of 2005, which is confirmed by the learned Sessions Judge in Criminal Appeal No.328 of 2008, dated 23.05.2011 is set aside.

8. Accordingly, the Criminal Revision Case is allowed.

K.SURENDER, J

Date: 14.12.2022
kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL RIVISION CASE No.1174 OF 2011

Date: 14.12.2022.

kvs