

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION Nos.15311 & 15314 of 2013

COMMON ORDER:

1. Criminal Petition No.15311 of 2013 is filed praying to quash proceedings against the petitioner in CC No.159 of 2012 on the file of IX Metropolitan Magistrate, Cyberabad at Kukatpally, which is the complaint filed by the 2nd respondent for the offence under Section 138 of the Negotiable Instruments Act against the petitioner.
2. Criminal Petition No.15314 of 2013 is filed praying to quash proceedings against the petitioner in CC No.159 of 2012 on the file of IX Metropolitan Magistrate, Cyberabad at Kukatpally, which is the complaint filed by the 2nd respondent for the offence under Section 420 IPC.
3. Since the petitioners in both the petitions and the complainant are one and the same and the transactions are also the same subject matter in both the cases under Section 138 of N.I.Act and Section 420 of IPC, they are being heard together and disposed off by way of this Common Order.

4. The 2nd respondent/complainant namely Sateesh Reddy Muvva in both the petitions was acquainted with the petitioner. The petitioner represented that he has site at Annanagar, Chennai and he wanted to sell the said plot for a sale consideration of Rs.35.00 lakhs and promised that he would get Rs.1.00 Crore out of sale of the said site within a period of six months. Accordingly, the 2nd respondent/complainant arranged total amount of Rs.38,52,199/- on different dates. Towards repayment of the said amount, the petitioner issued four post dated cheque bearing Nos.1608067, 1608068, 1608069 and 1608070 and the said cheques were returned for the reason of 'insufficient funds'. Accordingly, the petitioner/accused had dishonestly induced the 2nd respondent/complainant to part with huge amounts and issued cheques which were not honoured.

5. The said transactions, according to the complainant, attract both the offences under Sections 138 of the Negotiable Instruments Act and Section 420 of IPC. Accordingly, two complaints were filed and pending before the IX Metropolitan Magistrate, Cyberabad as stated above.

6. Learned counsel for the petitioner submits that originally the said agreement was entered as Memorandum of Understanding on 10.12.2006 and admittedly, an amount of Rs.38,52,199/- was invested as on the date of 07.11.2008. Since the 2nd respondent wanted his amount to be returned, both entered into Memorandum of Understanding dated 30.07.2009 and issued a schedule for cheques for total amount of Rs.36,64,220/-. As a counter guarantee, an agreement of sale was also executed in favour of the 2nd respondent's representative on 01.08.2009 for the property which was holding a registered value of Rs.63,36,000/-. However, the market value of the said property was more than Rs.1,50,00,000/- as on the date of agreement of sale. He further submits that there were several exchange of mails between the petitioner and the 2nd respondent and finally, the sale deed was executed on 06.08.2010 in favour of the person nominated as GPA by 2nd Respondent. When the said property was already registered, there cannot be any liability and the question of honouring the said cheques mentioned in the MOU dated 30.07.2009 does not arise and prayed to quash the proceedings.

7. In the Memorandum of Understanding dated 08.06.2008 between the GPA holder of the property at Chennai, the petitioner and the 2nd respondent, it was mentioned that the second respondent was aware of the various proceedings pending in the Court with respect to the schedule property and also accepted to enforce the MOU subject to the result of the proceedings before the Court. It is evident that the 2nd respondent was in fact aware about the pending litigation on the property and having knowledge about such agreement entered into the MOU. The MOU dated 30.07.2009 was entered into, pursuant to which, the cheques in question along with other documents were also issued. On 01.08.2009, the agreement of sale with possession was executed in favour of Y.Sudhakar Reddy, nominated by 2nd respondent.

8. The amounts that were given by 2nd Respondent were paid by his GPA holder E.Sambi Reddy. The said Sambi Reddy deposited total amount of Rs.38,52,199/- into the petitioner's account. Thereafter, MOU was entered by issuing cheques in question on 30.07.2009 for repayment of the amounts that were given. However, in accordance with

the agreement of sale dated 01.08.2009, the said agreement of sale was made absolute on 06.08.2010 by executing the property in favour of the said GPA holder Emani Sambhi Reddy by the petitioner herein towards repayment of cheques issued under MOU dated 30.07.2009. The said Emani Sambhi Reddy being GPA holder, has filed both the complaints. At the instance of complainant Satheesh Reddy Muvva, the property was transferred in favour of his GPA holder Emani Sambhi Reddy on 06.08.2010. In the said circumstances, there is no liability on the cheques issued under MOU dated 30.07.2009. Since the outstanding is discharged, there is no liability on the cheques issued which is subject matter of CC No.159 of 2012. Accordingly, the proceedings in CC No.159 of 2012 on the file of IX Metropolitan Magistrate, Cyberabad at Kukatpally against the petitioner are hereby quashed.

9. On the very same transactions, criminal complaint was also filed which is registered as CC No.801 of 2012 on the file of IX Metropolitan Magistrate, Cyberabad at Kukatpally for the offence under Section 420 of IPC. The transactions *interse* between the petitioner and Sateesh Reddy Muvva as

discussed in the preceding paras, are civil in nature. The pendency of various proceedings regarding the property was intimated to the 2nd respondent in MOU dated 06.08.2008. There is no false representation or any inducement made by the petitioner, pursuant to which, the 2nd respondent made the payment to petitioner. For the said reason, no offence is made out under Section 420 of IPC. Further, the alleged outstanding was also cleared by registering immovable property. For the aforesaid reasons, the proceedings against petitioner in CC No801 of 2012 on the file of IX Metropolitan Magistrate are also hereby quashed.

10. Accordingly, both the Criminal Petitions are allowed.

Date:20.09.2022
kvs

K.SURENDER, J

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION Nos.15311 & 15314 of 2013

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