THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.4830 of 2022

ORDER:

1. This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') by the petitioner/Accused to quash the proceedings against him in C.C.No.147/2022 on the file of II Additional Junior Civil Judge-cum-XVIII Metropolitan Magistrate Court at Medchal, Malkajgiri District. The offences alleged against him are under Sections 406 and 420 of the Indian Penal Code,

2. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the respondent State.

3. The petitioner is being prosecuted for the offence of criminal misappropriation and cheating on the basis of complaint lodged by the 2nd respondent. It is alleged in the complaint that this petitioner is an acquaintance and friend of her husband who died. The petitioner approached her and requested to help him out as he was in financial difficulty and requested to give the original documents of her house property to mortgage with the bank for obtaining a loan. To help the petitioner out of the situation, the 2nd respondent gave the said

documents and signed on certain papers which were brought by the accused. Trusting the petitioner, she signed on several papers. After some time, she received a notice from Canara Bank that an amount of Rs.1,61,71,042/- has to be paid within a period of 60 days. Then the 2nd respondent realized that the petitioner had played a fraud on her and having obtained loan he did not repay the Bank, as such, the account was declared as Non Performing Asset (NPA). Canara Bank also initiated proceedings under SARFAESI Act, 2002.

4. For the reason of obtaining loan by mortgaging her house property and not repaying the said loan amount, the 2nd respondent filed a complaint against this petitioner that his acts amounted to cheating and criminal misappropriation.

5. Learned counsel appearing for the petitioner/accused would submit that there are transactions between the petitioner and the 2nd respondent. In fact, the 2nd respondent had voluntarily executed mortgage deed of the documents before the bank authorities, having knowledge that property was being mortgaged towards security of loan taken by petitioner. However, she made a false claim in the present case that she was cheated. In fact, earlier also the Gift Deed No.5977 of 2005, dated 22.09.2005 was mortgaged with 'Shriram City finance' on

26.06.2019. It is not as though the 2nd respondent did not know about mortgaging the property with the banks. Having voluntarily signed before the bank authorities, subsequently claiming that this petitioner had cheated, cannot be believed. Apparently, a false story is made up against the petitioner, for which reason, the proceedings have to be quashed.

6. On behalf of the respondents, it was argued that this is a case of deliberate fraud that was played upon the 2nd respondent by taking her papers and mortgaging with the bank causing monetary loss to the 2nd respondent. The 2nd respondent believed the petitioner herein and handed over the gift deed, which was subjected to misappropriation by the petitioner, for which reason, the petitioner is liable to be prosecuted for cheating and criminal misappropriation punishable under Sections 420 and 406 of IPC. Accordingly, prayed to dismiss the petition.

7. During the course of investigation, it was revealed that the 2nd respondent filed a writ petition before this Court vide W.P.No.28291 of 2021 dated 10.11.2021 against the petitioner and the Canara Bank authorities. However, since the signatures of the 2nd respondent were available on the loan sanctioned documents, this Court did not grant any relief to the 2nd

respondent. Even according to the investigation, the 2nd respondent had executed loan documents before the bank authorities and mortgaged the gift deed. In the said circumstances, it cannot be said that the petitioner had cheated the 2nd respondent in any manner. Fraudulent inducement is the basic requirement to attract an offence of cheating.

8. Having knowledge that the documents are being mortgaged in a loan that was taken by the petitioner in Canara Bank, the 2nd respondent executing loan documents will not in any manner amount to cheating the 2nd respondent. Apparently, the 2nd respondent had knowledge about the documents being mortgaged before the Bank and accordingly executed the loan documents before the Bank. Subsequently, the petitioner failing to pay the loan amount or the Bank taking steps to recover the amounts under SARFAESI Act, it cannot be said that the petitioner had cheated the 2nd respondent. The transactions in question are purely civil in nature.

9. Further, the 2nd respondent's case is that the documents which were entrusted to the petitioner were misappropriated. The question of misappropriation punishable under Section 406 of IPC does not arise when the said document was mortgaged with the Bank after executing loan documents. In the present

case, there is no misappropriation of the deed in any manner. The deed that was mortgaged with the Bank and was later returned, according to the counsel for the petitioner, after payment of complete dues by the petitioner herein.

10. For the foregoing discussion, neither the ingredients of cheating punishable under Section 420 of IPC nor the offence of criminal misappropriation punishable under Section 406 of IPC are made out against the petitioner.

11. In the result, proceedings against the petitioner in C.C.No.147/2022 on the file of II Additional Junior Civil Judge-cum-XVIII Metropolitan Magistrate Court at Medchal, Malkajgiri District, are hereby quashed.

12. Accordingly, the Criminal Petition is allowed. Consequently, miscellaneous applications pending, if any, shall stand disposed.

K.SURENDER, J

Date: 14.02.2023
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THE HON'BLE SRI JUSTICE K.SURENDER

<u>CRIMINAL PETITION No.4830 of 2022</u>

<u>Dt. 14.02.2023</u>

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