

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.9327 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 petitioners/Accused No.3 to set aside the orders in Crl.M.P.No.442 of 2021 in C.C.No.520 of 2017, dated 16.09.2022 passed by the IX Additional Chief Metropolitan Magistrate, Hyderabad and quash the proceedings against petitioner/A3 in C.C.No.520 of 2017 on the file of IX Additional Chief Metropolitan Magistrate, Hyderabad.

2. Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the respondent – State. Perused the record.

3. The 2nd respondent filed complaint stating that they are manufacturers of gold jewelry. A1 approached them and placed orders for gold worth Rs.55,24,472/-. In discharge of the said outstanding against received ornaments, four cheques were given, out of which, two cheques were honoured.

However, the other two cheques were returned unpaid for the reason of 'funds insufficient'. Aggrieved by the same, criminal complaint was filed. The police after investigation found that A1 having taking the gold ornaments in turn sold 600 grams to this petitioner and also gave 20 grams gold towards safe custody. For the said reason, he was charge sheeted for the offence under Section 411 of IPC.

4. Learned counsel appearing for the petitioner would submit that Section 411 IPC is not attracted for the reason of the petitioner purchasing gold from A1 and even assuming 20 grams gold was given to him towards safe custody as claimed by the police, the same will not amount to dishonestly receiving the stolen property punishable under Section 411 IPC.

5. Learned Additional Public Prosecutor would submit that A1 had cheated the *defacto* complainant, for which reason, the gold which was taken by A1 would amount to stolen property. He further submits that the 600 grams gold which was sold by A1 to A3, A3 failed to make payment of the said gold to A1.

6. As seen from the allegations in the complaint, there is business transaction between A1 and the defacto complainant. The said transaction of purchasing gold was in the normal course of business. Four cheques were given towards repayment, two cheques were bounced. A1 had taken the gold ornaments and in turn has done business with respect to the said ornaments. Not being able to pay the part of the outstanding of the ornaments purchased will not fall within the definition of theft or extortion or robbery. When the petitioner herein, according to the police, had purchased gold or taken the gold from A1, it cannot be assumed that the gold is stolen property even considering that the payment was not made by A1 to the *defacto* complainant, as stated by Public Prosecutor.

7. Two different transactions are narrated. Firstly, A1 purchased gold from 2nd respondent and paid part of the amount. Secondly, A1 sold gold to this petitioner. Not paying part of the sale consideration will not amount to stealing the gold. Consequently, it cannot be said that A3 had received the stolen property punishable under Section 411 of IPC. Since

none of the ingredients of Section 411 of IPC are made out, the proceedings against this petitioner are liable to be quashed.

8. In the result, the proceedings against the petitioner/A3 in C.C.No.520 of 2017 on the file of IX Additional Chief Metropolitan Magistrate, Hyderabad are hereby quashed.

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

Date: 13.02.2023
kvs

K.SURENDER, J

THE HON'BLE SRI JUSTICE K.SURENDER

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Dated: 13.02.2023

kvs

