HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

TUESDAY ,THE NINTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SMT JUSTICE T.MADHAVI DEVI

CRIMINAL PETITION NO: 11408 OF 2023

Between:

1. M/s. Legend Estates Pvt. Ltd., Office at. Plot No.282, Road No.78, Near Padmalaya Studio. Jubilee Hills, Hyderabad - 500035. represented by its Managing Director B. Nageshwar Rao.
2. B. Nageshwar Rao, S/o. Late B. Chennaiah, aged about 56 years, Occupation. Business, R/o. Plot No.282, Road No.78, Near Padmalaya Studio, Jubilee Hills, Hyderabad - 500035.

...PETITIONER/ACCUSED(S)

AND

1. The State of Telangana, Represented through Public Prosecutor, High Court for the State of Telangana at Hyderabad.
2. P. Devender Rao, S/o. Rajeshwar Rao, Aged 59 years, Occ. Business, R/o. Plot No.1245, Flat No.S-2, Jyothi's Venkatadri Apartments. Road No.62. Jubilee Hills, Hyderabad.

...RESPONDENT/COMPLAINANTS

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to call for the records in C.C.N.I. No.6086 of 2022 on the file of the Honble VIII Metropolitan Magistrate, Hyderabad and quash the proceedings against Petitioners No.1 and 2/Accused No.1 and 2 in C.C.N.I.No.6086 of 2022 on the file of the Honble VIII Metropolitan Magistrate, Hyderabad and pass

I.A. NO: 1 OF 2023

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to stay all further proceedings including the appearance of the Petitioners in C.C.N.I. No.6086 of 2022 on the file of the Honble VIII Metropolitan Magistrate, Hyderabad, pending disposal of the above criminal petition and pass

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri G. Ashok Reddy, Advocate for the Petitioner and the Public Prosecutor (TG) on behalf of the Respondent No.1 and Sri T.Pranav Rao, Advocate for the Respondent No.2.

The Court made the following: ORDER

THE HON'BLE SMT. JUSTICE T. MADHAVI DEVI

CRIMINAL PETITION No.11408 of 2023

ORDER:

In this Criminal petition, the petitioners are seeking quash of the proceedings in C.C.N.I.No.6086 of 2022 on the file of VIII Metropolitan Magistrate, Hyderabad and to pass such other order or orders.

2. Brief facts leading to the filing of the present criminal petition are that Petitioner No.1 is a company which is engaged in the real estate business, while Petitioner No.2 is the Managing Director of Petitioner No.1 company. The allegations in the complaint are that the defacto complainant along with other landlords such as P.Srinivas Reddy and others entered into a registered development agreement-cum-GPA dated 11.09.2014 vide document No.4646/2014 with accused No.1 i.e., Petitioner No.1 Company, which is represented by the accused No.2/petitioner No.2 for development of the properties and that under the said development agreement, the accused No.1 company agreed to deliver 50% of the plotted area to the respondent No.2 i.e., defacto complainant and construct the independent luxury villas over the said plots and deliver the same within 36 months from the date of obtaining sanction permission from HMDA. It is submitted that accused No.1 company obtained sanction permission from HMDA under permit No.17/LO/HMDA/2014, dated 30.05.2014 and formed a layout and

divided the land into plots, but however, failed to construct villas as agreed. It is submitted that after series of discussions and deliberations, the parties entered into a supplementary agreement dated 26.05.2017, wherein the accused agreed to pay a sum of Rs.35,000/- per square yard in respect of 994 sq.yards, which was agreed to be allotted to the defacto complainant, which comes to Rs.3,47,90,000/- and consequently accused No.1 issued a cheque bearing No.000403, dated 15.05.2020 for sum of Rs.84,00,000/-, drawn on HDFC bank, Lakdikapul Branch, Hyderabad, but when the said cheque was presented before his bank i.e., ICICI Bank, Jubilee Hills Branch, Hyderabad, it was returned on 11.06.2020 with an endorsement "Account Blocked". Therefore, the respondent No.2/defacto complainant issued a legal notice dated 19.06.2020 calling upon the accused to pay the amount of Rs.84,00,000/- within 15 days from the date of receipt of that notice and the accused also sent a reply notice dated 03.07.2020 and therefore, the complaint under Section 138 of N.I.Act was filed.

3. Seeking quash of the said complaint, the petitioners/accused have raised the following grounds against the C.C.N.I.No.6086 of 2022. It is submitted that the provisions of Sub-Section (1) of Section 141 of the N.I.Act, have not been followed by the complainant and when the cheque has been returned due to reasons beyond the control of the petitioners, the provisions of N.I.Act are not applicable and therefore, the complaint

filed by the respondent No.2/defacto complainant against the petitioners is an abuse of process of Court and therefore, it is liable to be quashed.

4. Learned counsel for the petitioners placed reliance upon the following decisions in support of his above contentions:

(i) Kusum Ingots & Alloys Limited Vs. Pennar Peterson Securities Limited and Others[1];

(ii) D.S.Shridhar Vs. P.John and Another[2];

(iii) Onkar Nath Goenka Vs. Gujarat Lease Finance Limited[3];

(iv) Vijay Choudhry Vs. Gyan Chand Jain[4].

Learned counsel for the respondents, however, supported the complaint and submitted that the cheque was issued in the name of Petitioner No.1 company and it has been made as a party and Petitioner No.2 being the Managing Director, is also made party strictly in accordance with the provisions of Section 141 of N.I.Act. In support of his contentions, he placed reliance upon the following decisions:

(i) Indian Bank Association and Others Vs. Union of India and Others[5];

[1] (2000) 2 SCC 745
[2] Crl.P.No.3492 of 2022 (TSHC)
[3] MANU/DE/1508/2008
[4] MANU/DE/2777/2008

(ii) Rajeshbhai Muljibhai Patel and Others Vs. State of Gujarat and Another[6].

5. Having regard to the rival contentions and the material on record, this Court finds that the account of the petitioner was blocked on account of default by the petitioner company to the Income Tax Department. The account was blocked on 27.02.2020, whereas the alleged cheque bearing No.000403, dated 15.05.2020 was issued by the petitioner knowing fully-well that his account has been blocked by the Income Tax Department. It is submitted that initially an FIR was registered under Sections 138 of N.I.Act r/w 420 of IPC. Subsequently, Section 420 of IPC was dropped and proceedings are being prosecuted only under Section 138 of N.I.Act. The contentions raised by the petitioners are that the complaint is not maintainable due to non-compliance of Sub-Section (1) of Section 141 of N.I.Act and also that the return of cheque was due to reasons beyond the control of the petitioners and hence the provisions of Section 138 of N.I.Act are not attracted. However, this Court is of the opinion that the above legal ground is subject to verification of various facts, which is not possible and permissible under Section 482 of Cr.P.C. The contentions raised by the petitioners can be verified and truth can be elicited only during the trial before the trial Court.

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[5] (2014) 5 SCC 590
[6] (2020) 3 SCC 794

6. In view of the same, this Court does not find any merit in the Criminal Petition filed by the petitioners and is liable to be dismissed.

7. Accordingly, this Criminal Petition is dismissed. However, it is directed that the trial Court shall not be influenced of any of the observations of this Court while disposing of this criminal petition.

8. Miscellaneous applications, if any pending, shall also stand closed.

SD/- T. VIJAY KUMAR
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,
1. The VIII Metropolitan Magistrate, Hyderabad
2. One CC to Sri G. Ashok Reddy, Advocate [OPUC]
3. One CC to Sri T. Pranav Rao, Advocate [OPUC]
4. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad [OUT]
5. Two CD Copies

swt

HIGH COURT

DATED:09/01/2024

ORDER

CRLP.No.11408 of 2023

DISMISSING THE CRIMINAL PETITION

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20/2/24
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