–

*** THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

–

+ CRIMINAL PETITION No.7873 OF 2010

% 31.03.2016

–

–

–

Battula Siva Nageshwar Rao

Petitioner

VERSUS

$ Jasti Venkateswara Rao & Another.

Respondent

! Counsel for Petitioner : Sri Y. Ramarao

^ Counsel for the 1st respondent : Sri Syed Ghouse Basha

<GIST:

> HEAD NOTE:

? Cases referred

[1] (1986) 2 SCC 716 = AIR 1986 SC 2045

2 (2014) 15 SCC 357

3 1971 CriLJ 1361

4 AIR 1971 SC 1244

5 AIR 1960 SC 866

[6] AIR 1992 SC 604
[7] (2009) 3 SCC 78
[8] 2015 (1) ACR 564 (SC)

-

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.7873 OF 2010

ORDER:

1 This Criminal Petition is filed under Section 482 Cr.P.C. seeking to quash the proceedings against the petitioner in C.C.No.73 of 2008 on the file of the Court of the Judicial Magistrate of I Class, Gudivada, Krishna District.

2 Sri Y.Ramarao, the learned counsel for the petitioner, would submit that the trail Court committed grave error while taking cognizance of the offences against the petitioner under Sections 385 and 427 of IPC. He further submitted that even if the allegations made in the complaint are taken at their face value true and correct, the same would not constitute any offence much less the offences alleged to have been committed by the petitioner. He further submitted that if the criminal proceedings are allowed to be continued, the same would amount to miscarriage of justice as well as abuse of process of law.

3 Controverting the arguments of the learned counsel for the petitioner, Sri Syed Ghouse Basha the learned counsel for the first respondent, would submit that the allegations made in the complaint prima facie constitute the offences committed by the petitioner. He further submitted that the Court has to evaluate the material available on record to ascertain whether there is any prima facie case or not against the accused, but should not consider whether there is any ground for conviction. He further submitted that there are no grounds much less valid grounds to quash the proceedings against the petitioner by exercising inherent jurisdiction under Section 482 Cr.P.C.

4 The factual back ground in which this Criminal Petition arises may

be summarized as under:

5 The first respondent filed a private complaint under Sections 190 and 200 Cr.P.C. on the file of the Judicial Magistrate of I Class, Gudivada, Krishna district against the petitioner for the offences punishable under Sections 420, 379, 468, 385 and 506 of IPC alleging that on 12.09.2005 he visited his brother's house at Pamarru. After settlement of the financial transaction, he has taken back 20 blank promissory notes, blank cheques bearing Nos.118551 to 118575 drawn on Urban Bank, Gudivada branch, blank cheque beraring Nos.689030 to 689050 drawn on Gandhi Nagar branch, Vijayada and two non-judicial stamp papers worth of Rs.100/- each duly signed by him (first respondent) from his brother. On the even date i.e. 12.09.2005 while the first respondent getting into the bus at Pamarru bus stand to go to Gudivada, the polythene bag in which the above referred cheque books, promissory notes and non-judicial stamp papers were kept, was misplaced. Immediately the first respondent rushed to Pamarru Police Station and informed the same. Subsequently, the Station House Officer, Pamarru Police Station, issued a non-tracing certificate on 15.09.2015. On 24.09.2015 the first respondent issued a paper publication in Vaartha daily newspaper about the missing of the above mentioned documents.

6 While the things stood thus, on 20.01.2016, the petitioner got issued a legal notice to the first respondent as if he (first respondent) executed a promissory note in favour of the petitioner on 12.12.2004 for an amount of Rs.2.00 lakhs agreeing to repay the same with interest @ 24 % p.a. and also issued a cheque bearing No.0118551 for Rs.2,52,000/-. The first respondent got issued a reply notice stating that he lost the polythene bag on 12.09.2005 at Pamarru bus stand and directed the petitioner to handover the same. The petitioner demanded huge amount from the first respondent for return of the above said documents.

7 The petitioner filed C.C.No.693 of 2006 on the file of the I Additional Chief Judicial Magistrate, Vijayawada as if the first respondent has

committed the offence punishable under Section 138 of Negotiable Instruments Act, taking advantage of custody of the signed cheque bearing No.0118551. The petitioner also filed O.S.No.229 of 2006 on the file of IV Additional Senior Civil Judge, Vijayawada against the first respondent for recovery of suit amount as if the first respondent executed a promissory note. Immediately the first respondent approached the Sub-Inspector of Police, Pamarru Police Station and submitted a written complaint on 10.2.2007 but in vain. Hence the first respondent was forced to file the private complaint before the trial Court.

8 The learned Judicial Magistrate of I Class, Gudivada, after examining the witnesses, has taken cognizance of the offences against the petitioner for the offences punishable under Sections 385 and 427 of IPC on 13.2.2008 and issued summons. Hence the present petition.

9 Section 383 IPC defines 'Extortion'. Section 385 IPC prescribes punishment for putting a person in fear of injury in order to commit extortion.

10 In ***R.S.Nayak v. A.R. Antulay***[1] the Hon'ble apex Court analyzed the basic ingredients of extortion, which read thus:

(i) the accused must put any person in fear of injury to that person or any other person;

(ii) the putting of a person in such fear must be intentional;

(iii) the accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security; and

(iv) such inducement must be done dishonestly.

11 In ***Isaac Isanga Musumba Vs. State of Maharashtra***[2] the Hon'ble apex Court held at Para No.3 as follows:

> "In the complaint, there is no mention whatsoever that pursuant to the demands made by the accused, any amount was delivered to the accused by the complainants. If that be so, we fail to see as to how an offence of extortion as defined in Section 383 IPC is made out. Section 383 IPC states that:
>
> "**383. *Extortion.-*** Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly

> induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits 'extortion'."
>
> Hence, unless property is delivered to the accused person pursuant to the threat, no offence of extortion is made out and an FIR for the offence under Section 384 could not have been registered by the police."

12 Let me consider whether the allegations made in the complaint prima facie satisfy the ingredients of Section 385 IPC or not. Had it been the case of the first respondent that on 12.09.2005 the petitioner by putting him in fear of injury, had taken away the polythene bag, then there may be some justification to take cognizance of the offence under Section 385 of IPC. I have scanned the entire complaint to see whether the allegations made in the complaint prima facie fit in the definition of extortion. Even if the allegations made in the complaint *ex facie* are taken to be true and correct, the first respondent lost the polythene bag at Pamarru bus stand which eventually came into possession of the petitioner. There is no allegation in the complaint that the petitioner by putting the first respondent in fear of injury has taken away the polythene bag from him with an ulterior motive. In the absence of such an allegation in the complaint, the trial Court ought not to have taken cognizance of the offence under section 385 of IPC against the petitioner. Taking cognizance of an offence against an accused without satisfying the basic ingredients of a particular offence and continuation of criminal proceedings, certainly would amount to miscarriage of justice.

13 Section 425 IPC defines 'Mischief'. In ***Gajadhar v. State***[3] the High Court of Allahabad held at para Nos.9 and 10 as under:

> 9. The essential ingredients of this Section are:
>
> 1) Intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person,
>
> 2) Causing destruction of some property or any change in it or in its situation,
>
> 3) Such change must destroy or diminish its value or utility or affect it injuriously.
>
> 10. This Section does not envisage an attempt to cause wrongful gain to the wrongdoer but envisages only causing of wrongful loss to the aggrieved person.

14 It is apposite to refer a few facts which are relevant for better appreciation of the rival contentions.

15 The contention of the petitioner is that the first respondent borrowed an amount of Rs.2.00 lakhs from him on 21.12.2004 and executed a promissory note on the even date agreeing to repay the same with interest @ 24 % p.a. It is the further case of the petitioner that the first respondent issued a cheque bearing No.0118551 towards discharge the said loan amount. Basing on the promissory note, the petitioner filed O.S.No.229 of 2006 on the file of IV Additional Senior Civil Judge, Vijayawada against the first respondent for recovery of an amount of Rs.2,61,330/-. The petitioner also field C.C.No.693 of 2006 on the file of the I Additional Chief Judicial Magistrate, Vijayawada against the first respondent for the offence under Section 138 of N.I. Act. Even as per the allegations made in the complaint, on 20.01.2006, the first respondent received a legal notice from the petitioner wherein the petitioner directed the first respondent to pay the amount covered under the promissory note failing which he will be constrained to approach the Court of law for redressal. The first respondent got issued a reply taking the stand that he lost his polythene bag on 12.09.2005 at Pamarru bus stand which contains the promissory notes, cheques and non-judicial stamp papers. According to the first respondent he came to know that the polythene bag lost by him came into possession of the petitioner on 20.01.2006. On 28.06.2006 the first respondent filed written statement in O.S.No.229 of 2006 taking the same stand as put forth by him in the reply notice. The first respondent filed the complaint on 12.11.2007. For one reason or the other the first respondent did not choose to set the criminal law in motion up to 12.11.2007. No doubt, if the complaint is lodged within the period of limitation, the Court has to take cognizance of the offence as the reasons for delay and other relevant aspects have to be considered at the time of full fledged trial only. At the same time, the Court shall not lose sight of the human conduct. On coming to know about the custody of 20 promissory notes and signed cheques as well as two non-judicial stamp

papers by some unknown person, whether any ordinary prudent man will keep quiet for a period of two years more particularly having received a legal notice followed by filing of a civil suit for recovery of money. The stand of the first respondent is that on 12.09.2005 he has taken back 20 promissory notes and signed cheques as well as two non-judicial stamp papers from his own brother after settlement of financial transaction. Even if the version put forth by the first respondent is presumed to be true, he has not allowed his own brother to retain the above referred documents even for a day immediately after the alleged settlement. Whether a man of such nature will keep quiet without taking appropriate steps by approaching the appropriate forum for redressal for such a long time?

16 It is not in dispute that O.S.No.229 of 2006 filed by the petitioner was decreed on 30.09.2009 negating the contention of the first respondent herein. The cause of action for filing of the complaint by the first respondent before the trial Court and the stand taken by him in the written statement in O.S.No.229 of 2006 is one and the same. In the said suit the civil Court disbelieved the story of taking of promissory notes and other documents by the first respondent from his brother. The learned counsel for the first respondent submitted that the findings recorded by the civil Court may not be taken into consideration in view of pendency of appeal. On the other hand, the learned counsel for the petitioner submitted that the findings recorded by the civil Court are binding on the Criminal Court. In support of his contention, the learned counsel for the petitioner relied on the ratio laid down in ***Karam Chand Ganga Prasad v. Union of India***[4] wherein the Hon'ble apex Court held that "…..**it is a well established principle of law that the decisions of Civil Courts are binding on the criminal Courts. The converse is not true**".

17 Having regard to the facts and circumstances of the case on hand and also the principle enunciated in the cases cited supra, I am of the considered view that the findings recorded by the civil Court in O.S.No.229 of 2006 are binding on the criminal Court. If viewed from this angle also, the complaint is not maintainable.

18 A fascicular reading of Sections 425 and 427 of IPC at a glance clearly demonstrates that in order to convict a person under Section 427 IPC, the prosecution has to establish that the accused caused loss or damage to the property worth more than Rs.50/- belonging to the complainant. Had it been the case of the complainant that the petitioner herein damaged the cheques and promissory notes of the first respondent, then there may be some justification for the trial Court to take cognizance of offence under Section 427 IPC against the petitioner. The case, as put forth by the first respondent, will not fall within the ambit of any one of the illustrations or the explanations to Section 425 IPC. The words 'loss' or 'damage' as used in Section 427 IPC indicate causing loss or damage to the property worth more than Rs.50/- and not in any other manner. The allegations made in the complaint are bereft of the basic ingredients of Section 427 IPC. By any stretch of imagination the allegations made in the complaint taken at their face value are to be true and correct, it cannot be presumed that the petitioner committed offence punishable under Section 427 IPC. In such circumstances, it is incongruous to compel the petitioner to undergo mental agony by facing the rigour of criminal trial.

19 The first respondent filed complaint alleging as if the petitioner committed offences punishable under sections 420, 379, 468, 385 and 506 of IPC. As stated supra, the trial Court, after recording of statements of the witnesses, took cognizance of the offences against the petitioner under Sections 385 and 427 of IPC even though it is not the case of the first respondent that the petitioner committed the offence under Section 427 IPC. It is needless to say that the Court cannot take cognizance of an offence without there being pleading or prayer. Had the trial Court taken a little bit of care and caution, it might not have taken cognizance of the offence under section 427 IPC against the petitioner. The trial Court, basing on the material available on record, arrived at a conclusion that no prima facie case is made out against the petitioner for the offences under Sections 420, 379, 468 and 506 of IPC. If really the first respondent is

aggrieved by the action of the trial Court in not taking cognizance of the offences against the petitioner for the above referred sections of law, certainly, he would have challenged the same by way of filing a Revision Case. At the time of arguments, the learned counsel for the first respondent submitted that the first respondent has not challenged the action of the trial Court for not taking cognizance of the offences referred supra. Therefore, the order passed by the trial Court became final so far as taking of cognizance of the offences under Sections 420, 379, 468 and 506 of IPC are concerned, against the petitioner.

20 It is settled principle of law that the Court has to exercise its inherent jurisdiction in rarest of rare cases. As per the principle enunciated in ***R.P.Kapoor v. State of Punjab***[5], ***State of Haryana v. Bhajan Lal***[6], ***V.Y.Jose v State of Gurajat***[7] and ***Teeja Devi v State of Rajasthan***[8], where the allegations made in the First Information Report or the Complaint, even if they are taken at their face value and accepted in their entirety, do not prima-facie constitute any offence, the Court can quash the criminal proceedings against the accused while exercising inherent jurisdiction under Section 482 Cr.P.C.

21 Having regard to the facts and circumstances of the case and also the principles enunciated in the case cited supra, I am of the considered view that the petitioner deserves the relief as sought for.

22 For the foregoing discussion, this Criminal Petition is allowed, quashing the proceedings against the petitioner in C.C.No.73 of 2008 on the file of the Court of the Judicial Magistrate of I Class, Gudivada, Krishna District. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition, shall stand closed.

_____

T. SUNIL CHOWDARY, J

Date: 31st March, 2016

L.R.Copy be marked
(B/o)

Kvsn

---

[1] (1986) 2 SCC 716 = AIR 1986 SC 2045

[2] (2014) 15 SCC 357

[3] 1971 CriLJ 1361

[4] AIR 1971 SC 1244

[5] AIR 1960 SC 866

[6] AIR 1992 SC 604

[7] (2009) 3 SCC 78

[8] 2015 (1) ACR 564 (SC)