

Order on Exh. 17

The accused had filed the application to stay the proceeding till the filing of chargesheet and final adjudication of crime No. 75/2014. According to her the facts giving rise to the present complaint and Crime No. 75/2014 are same and her defence is going to be opened before filing of the chargesheet in Crime No. 75/2014. Therefore, she has prayed to stay the proceeding of the present case.

2. The complaint has filed its Say at Exh-20 and thereby raised strong objection to the application. It is specifically contended that the nature of present case and the nature and allegations in crime No. 75/2014 are different to each other and there is no need to stay the proceeding of the present case.

3. I have heard Ld. Counsel for the complainant and accused at considerable length. The counsel for the accused has placed on the documents pertains to Crime No. 75/2014 and Counsel for the complainant placed reliance upon citations.

Pradeepkumar Chandrakant Shroti V/s. Salim Khan Aashique Khan (Zaduwala) 2014 ALL MR(Cri)5125, wherein it is observed that,

Negotiable Instrument Act(1881), Section 138-- Dishonour of cheque--Stay on proceeding for pendency of civil suit--Validity--Proceedings under S.138 of Act are independent of Civil suit if any filed for declaration of notice issued under S. 138 of Act--There could not have been any stay on proceeding pending before Magistrate under S. 138 of Act--Order granting stay, not proper.

4. I have given thoughtful consideration to the submission of the Counsel and proceeding on record. In instant case the complainant had contended that the accused have availed the Gold loan and in order to repay the due loan amount she issued the disputed cheque. The disputed cheque dishonoured due to account close. Hence the complaint.

5. It reveals from the document of Crime No. 75/2014 that the present complainant has made allegations against present accused that she alongwith other accused cheated the complainant firm by depositing fake ornaments under impression that those ornaments are golden ornaments and thereby caused wrongful loss to the complainant. The nature and allegations made in Crime No. 75/2014 are different from the present case. In instant case the complainant is under obligation to show legal liability and in order to discharge legally enforceable debt the accused issued disputed cheque. Per contra the crime No. 75/2014 is all about cheating and forgery. The alleged crime has been registered under Section 420, 408, 465, 467, 468, 471 r.w. 34 of Indian Penal Code. There are allegations that the present accused has handedover the fake ornaments by showing that those are golden ornaments and thereby availed loan from the complainant-firm. It means there are allegations pertains to loan and cheating while availing the loan. In instant case the complaint is under obligation to show legally enforceable debt by accused. The contentions and allegations of the present case are totally different from story of the crime No. 75/2014. Both litigations are different in nature. Therefore, there is no need to stay the present proceeding.

Order

Application is rejected.

Date – 03/12/2015.

(Manisha N.Chavan)
Judicial Magistrate, First Class,
Chiplun.