

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petitioner No.5126 OF 2019

Between:

Mirza Ghousia

... Petitioner

And

The State of Telangana

Rep. by Public Prosecutor and another.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 19.10.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.P. No. 5126 of 2019

% Dated 19.09.2022

Mirza Ghousia

... Petitioner

And

\$ The State of Telangana

Rep. by Public Prosecutor and another

..Respondents

! **Counsel for the Petitioner:** Sri Asadulla Shareef

^ **Counsel for the Respondent:** Public Prosecutor.

>HEAD NOTE:

? Cases referred

¹ (1995) 5 SCC 482

² (1981) 2 SCC 246

³ AIR 1966 Madras 13

⁴ (1986) AIR 1571

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION NO. 5126 OF 2019****ORDER:**

1. This petition is filed to quash the proceedings against the petitioner in CC No.302 of 2016 on the file of XXIV Special Magistrate, Hyderabad.

2. The petitioner is accused in the complaint filed by the 2nd respondent for the offence under Section 138 of the Negotiable Instruments Act.

3. The case of the complainant is that the petitioner was an employee of the complainant company and entered into an agreement dated 15.10.2015 as she was selected for training in the field of medical coding at the cost of the complainant company, which was estimated at Rs.1.00 lakh. The complainant company agreed to train the petitioner/accused in the field of medical coding and bound herself to serve the complainant company for a period of 24 months from the date completion of said training programme. In the event of the petitioner/accused resigning from the service before the expiry of 24 months, the petitioner/accused agreed to pay Rs.1.00 lakh towards compensatory damages. The said cheque

in question was taken as security at the time of entering into agreement on 15.10.2015.

4. For the reason of the petitioner stopping from attending her duties from 07.03.2016, the complainant requested her to report to duty by addressing letter dated 10.03.2016. Since the letter was ignored, the complainant company again addressed another letter dated 13.04.2016 to pay an amount of Rs.1.00 lakh together with interest and since the petitioner ignored the said letter also, cheque was presented on 08.08.2016 and on the very same day, it was returned for the reason of 'insufficient funds'.

5. The respondent/complainant to substantiate their claim as legally enforceable debt of the cheque amount, has produced an agreement dated 15.10.2015 and at the time of the said agreement, the subject cheque was handed over to complainant company by undertaking in the said agreement that the petitioner is liable to the company a sum of Rs.1.00 lakh by way of compensatory damages and it further states that employee/petitioner shall not raise any dispute regarding the quantum of damages to be paid to the company.

6. The said agreement is one sided agreement which entitles the complainant company to recover an amount of Rs.1.00 lakh in the

event of termination of the employment within 24 months. The said agreement, though entered into and signed by the petitioner/accused, it cannot be held to be a valid agreement. The said agreement empowers the company to take action against the employee, who is the petitioner/accused herein. However, under no circumstances it entitles the petitioner/employee/accused to seek any remedy against the company in the event of the company taking any action which would be inappropriate to the employee. It is not as though that no remedy would be available if an employer does any act in violation of the rights of an employee.

7. In **Life Insurance Corporation of India v. Consumer Education and Research Centre and others**¹, the Hon'ble Supreme Court has held that *"if a contract or a clause in a contract is found unreasonable or unfair or irrational one must look to the relative bargaining power of the contracting parties. In dotted line contracts there would be no occasion for a weaker party to bargain or to assume to have equal bargaining power. He has either to accept or leave the services or goods in terms of the dotted line contract. His option would be either to accept the unreasonable or unfair terms or forego the service forever. With a view to have the services of the goods, the party enters into a contract with unreasonable or unfair*

¹ (1995) 5 SCC 482

terms contained therein and he would be left with no option but to sign the contract".

8. In Superintendence Company of India (P) Ltd v. Sh. Krishan Murgai², Hon'ble Supreme Court held that *"It is well settled that employees covenants should be carefully scrutinized because there is inequality of bargaining power between the parties; indeed no bargaining power may occur because the employee is presented with a standard form of contract to accept or reject. At the time of the agreement, the employee may have given little thought to the restriction because of his eagerness for a job; such contracts tempt improvident persons, for the sake of present gain, to deprive themselves of the power to make future acquisitions, and expose them to imposition and oppression."*

9. In **Lilly White v. Mannuswami³**, it was observed that the terms of the contract would be declared to be unreasonable if it is contradictory to the purpose of entering into the contract or violates the public policy. Over time and again, courts have refused to enforce unfair and unreasonable contracts or clauses in contracts that are arbitrary and an abuse of position due to the inequality in bargaining power. In case it can be shown that the party was not in a disadvantaged position and

² (1981) 2 SCC 246

³ AIR 1966 Madras 13

was not prevented from bargaining the terms, the contract will be upheld.

10. In the case of ***Central Inland Water Transport Corporation limited vs Brojo Nath Ganguly***⁴ In this case, It was held that Contract which are unconscionable, unfair, unreasonable and opposed to public policy are void. Contractual terms of the employment is stereotyped form on “take it or leave it” basis detrimental to the employees, even if accepted by the employees, liable to be declared void and inoperative on these grounds.

11. In the present case, it is not made clear as to how the employee/accused is outstanding amount of Rs.1.00 lakh. It is mentioned in the agreement Ex.P1 that in the event of termination of employment for any reason, the employee accused would be liable.

12. Admittedly, the cheque was given initially towards security and the company has failed to substantiate as to how the petitioner/accused is due the amount of Rs.1.00 lakh. Specific details have to be provided by the complainant/employer to show that the outstanding amount either falls within the definition of ‘debt or ‘other liability’. Only because there is an agreement, which was signed by the petitioner/accused by giving blank cheque

⁴ (1986) AIR 1571

stating that in the event of leaving the company, an amount of Rs.1.00 lakh would be paid, would not amount to debt or other liability as required under Section 138 of the Negotiable Instruments Act.

13. For the said reasons, (i) the complainant failed to prove that the amount of Rs.1.00 lakh covered by the cheque is outstanding falling within the definition of debt or other liability, (ii) the complaint also fails also for the reason of the liability arising out of an invalid agreement.

14. In the result, the proceedings against the petitioner CC No.302 of 2016 on the file of XXIV Special Magistrate, Hyderabad are hereby quashed.

15. Accordingly, the Criminal Petition is allowed.

K.SURENDER, J

Date: 19.10.2022

Note: LR copy to be marked.

B/o.kvs

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.5126 of 2019

Dt.19.10.2022

kvs