

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.1841 of 2015

ORDER:

_____ This petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.117 of 2013 on the file of the IV Additional Chief Metropolitan Magistrate at Visakhapatnam.

2. The contention of the learned counsel for the petitioner is two fold: (1) Taking advantage of lost of the cheque bearing No. 000094, dated 20.11.2012 by the petitioner, the first respondent filed the present complaint, (2) The alleged debt is not legally enforceable, therefore, the complaint is liable to be quashed.

3. The learned counsel for the first respondent submitted that whether the petitioner has lost the cheque in question or not requires full-fledged trial, therefore, it is not a fit case to quash the proceedings.

4. As per the allegations made in the complaint, the petitioner issued a cheque bearing No.000094, dated 20.11.2012 for an amount of Rs.30,00,000/- drawn on Union Bank of India, Siripuram, Visakhapatnam in favour of the first respondent. The first respondent presented the above referred cheque in Karnataka Bank Limited, CBM Compound, Visakhapatnam for collection and the same was returned with an endorsement of "No account/account closed on advice". The first respondent got issued a notice to the petitioner as contemplated under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the N.I.Act") directing the petitioner to pay the amount within 15 days from the date of receipt of the notice. The petitioner issued a reply notice stating that he lost three cheques including the cheque in question, therefore, there is no enforceable debt. Having no other alternative, the first respondent filed complaint under Section 200 Cr.P.C.

5. The learned Magistrate, after following the procedure as contemplated under the N.I. Act, has taken the cognizance of offence against the petitioner under Section 138 of the N.I. Act and issued summons.

6. A perusal of the record clearly reveals that the first respondent has followed the procedure as contemplated under the N.I. Act. The learned Magistrate, after satisfying himself with the material placed before him, has taken the cognizance of offence against the petitioner by following the procedure as contemplated under Section 138 of the N.I. Act. A perusal of the record clearly manifests that the learned Magistrate has not committed any illegality or irregularity while taking the cognizance of offence so as to quash the proceedings. It is a settled principle of law that the Court has to take into consideration whether the allegations made in the complaint are *prima facie* sufficient to take cognizance of offence against the accused. Absolutely there is no material on record to establish that the trial Court has committed illegality while taking the cognizance of offence.

7. Whether the petitioner has lost the cheque bearing No.000094, dated 20.11.2012 or not has to be decided after full-fledged trial only. Whether the debt is legally enforceable or not is purely a question of fact. The various queries raised by the learned counsel for the petitioner involve complexity of disputed questions of fact which require full-fledged trial. The various contentions urged by the petitioner falls outside the purview of Section 482 Cr.P.C.

8. In **Madhu Limaye Vs. State of Maharashtra**^[1] the Hon'ble Supreme Court held as under:

“At the outset the following principles may be noticed in relation to the exercise of inherent power of the High Court, which have been followed ordinarily and generally, almost invariably, barring a few exceptions.

1. That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the

aggrieved party;

2. That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
3. That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.”

9. **I n Padal Venkata Rama Reddy @ Ramu Vs. Kovvuri**

Satyanarayana Reddy^[2], the Hon’ble Supreme Court held as under:

13. It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide *Kavita v . State* {2000 Cri LJ 315 (Del)} and *B.S. Joshi v. State of Haryana* {(2003) 4 SCC 675}. If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specially when the applicant may not have availed of that remedy.

10. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that it is not a fit case to quash the proceedings at this point of time.

11. Hence, the Criminal Petition is dismissed. The trial Court is hereby directed to dispose of the matter without being influenced by the observations, if any, made by this Court in this order.

12. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

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T.SUNIL CHOWDARY, J

Date: 14.12.2015

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^[1] (1977) 4 SCC 551

^[2] (2011) 12 SCC 437

