

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.13391 of 2015

ORDER:

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This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioner/accused in C.C.No.1021 of 2014 on the file of the Court of II Additional Metropolitan Magistrate, Vijayawada, Krishna District.

The contention of the learned counsel for the petitioner is two fold:

1. The second respondent forged the signature of the petitioner on the acknowledgment dated 05.05.2012;

2. The petitioner closed the business on 17.02.2012, therefore, there is no need for him to issue the cheque in favour of the second respondent on 29.03.2012.

A perusal of the record reveals that the petitioner is the sole accused and the second respondent is the *de facto* complainant. As per the allegations made in the complaint, the accused has issued the cheque bearing No.660590 dated 29.03.2012 for a sum of Rs.60,45,000/- drawn on ING Vysya Bank Ltd., Labbipet Branch, Vijayawada in favour of the second respondent. The second respondent submitted the said cheque for collection in State Bank of Hyderabad and the same was returned with an endorsement 'account closed'. On 03.05.2012, the second respondent got issued a notice to the petitioner directing him to pay the amount covered under the cheque within fifteen days, failing which, legal consequences follows. It is further alleged that the petitioner has not issued a reply notice. Having no other alternative the second respondent filed a complaint under Section

200 Cr.P.C. before the II Additional Metropolitan Magistrate Court, Vijayawada, Krishna District. The learned Magistrate after satisfying himself with the material placed before him has taken cognizance of offence against the petitioner/accused under Section 138 of Negotiable Instruments Act(for short 'the Act'). As rightly pointed out by the learned counsel for the petitioner, the complaint is not maintainable without issuing a notice to the accused as contemplated under Section 138 of the Act. As per the allegations made in the complaint, the second respondent got issued a notice to the petitioner and the same was received by the petitioner, but not chosen to issue reply notice. The contention of the petitioner is that the second respondent himself forged his signature on the acknowledgment. Whether the second respondent forged the signature of the petitioner or not is purely a disputed question of fact. The point urged by the learned counsel for the petitioner falls outside the purview of Section 482 Cr.P.C. Whether the petitioner has closed his business on 17.02.2012 or not is also a disputed question of fact. Various questions raised by the learned counsel for the petitioner involve complexity of disputed questions of fact, which requires a full fledged trial. This Court can quash the proceedings while exercising the inherent power under Section 482 Cr.P.C., if there is any illegality.

A perusal of the record *prima facie* reveals that the second respondent has meticulously followed the procedure contemplated under Section 138 of the Act before filing of the complaint. The learned Magistrate has meticulously followed the procedure as contemplated under the Act before taking of cognizance of offence against the petitioner. It is a settled principle of law that the Court has to take into consideration the allegations made in the

complaint are *prima facie* sufficient to proceed further or not. The material placed before the Court is *prima facie* sufficient to proceed further against the petitioner.

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.”

In **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.

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 while exercising the inherent

power under Section 482 Cr.P.C.

Hence, the Criminal Petition is dismissed. Consequently,
Miscellaneous Petitions, if any, pending in this Criminal Petition
shall stand closed.

T.SUNIL CHOWDARY, J

Date:16.12.2015

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[\[1\]](#) (1977) 4 SCC 551

[\[2\]](#) (2011) 12 SCC 437