

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.3526 of 2015

ORDER:

The petitioner Smt.B.Sunitha, W/o. Late Venkata Ramana is an accused in C.C.No.1 of 2015 on the file of XVI Special Magistrate, Redhills, Hyderabad, which is an out come of a private complaint registered for the offence under Section 138 of Negotiable Instruments Act maintained by the second respondent T.Sharath, Advocate, Jubilee hills, Hyderabad.

The complaint speaks that a cheque bearing No.755370, dated 25.10.2014 for Rs.3 lakhs when presented, which is a part of the legal remuneration, returned dishonoured vide bank memo dated 1/6-11-14 and even after statutory notice dated 18.11.2014, served on the accused on 25.11.2014, but the accused failed to pay thereby liable for the offence under Section 138 of the N.I.Act. The complaint averments further show that the accused is no other than a relative to the complainant and on behalf of the accused and her family members, an advocate filed O.P.No.152 of 1999, for motor accidental death of her husband late Venkata Ramana for compensation and before the motor accident tribunal, the compensation awarded by allowing in part of the claim was Rs.64,88,000/- with interest 9% per annum and impugning the same, the insurance company preferred CMA No.3454 of 2002 that was ended in dismissal on 02.07.2004 and insurance company filed a civil appeal No.4844 of 2005, before the Supreme Court, that was also ended in dismissal on 24.09.2012; that insurance company deposited Rs.85,73,880/- ultimately on 28.06.2013 to the credit of O.P.No.152 of 1999 and as per orders passed therein, the accused is entitled to 40% of the compensation towards her share which comes to 34,29,552/- and after receipt of the same, the accused issued cheque in favour of the complainant for Rs.3,00,000/- on 25.10.2014 drawn on Andhra Bank, Vijayanagar Colony Branch, Masab Tank, Hyderabad towards professional and Court expenses upto Supreme Court and the cheque was sent through G.Nagaraju Advocate, who is the colleague of the complainant and relative of the accused who also rendered service by going to the residence of the accused for all necessary papers and signatures of the accused and the cheque when presented returned dishonoured, thereby the complaint.

The learned Magistrate after recording the sworn statement of the complainant Sri T.Sharath taken cognizance and taken the case on file. The accused filed the quash petition showing the first respondent-State as well as the second respondent *defacto* complainant to quash the said private complaint case proceedings.

The contentions in the quash petition raised by the accused and the petitioners are that the complaint did not disclose commission of the offence under Section 138 of Negotiable Instruments Act, there is no legally enforceable debt from the very complaint for the reason of claiming exorbitant amount as professional charges and Court expenses contrary to the law and prescribed procedure and the very claim is not legally enforceable, the statutory notice for cheque dishonoured could not satisfy the quantum of amount required to be paid for the cheque in question, otherwise, it lacks sanctity and the proceedings are nonest in the eye of law, the accused already paid Rs.10,00,000/- to the complainant supported by relevant documents which are enclosed herewith and still the filing of the complaint by misusing the cheque is in violation of Advocate Rules and ethics so also in demanding a percentage money based on quantum of compensation covered by E-Mail conversation, which is part of quash petition enclosures and thereby against public policy and out come of dishonest intention and motive and is liable to be quashed.

After appearance and on hearing both sides, the matter was reserved for orders. Infact, during the course of hearing for any possibility of settlement, the matter was adjourned as can be seen from the docket proceedings and ultimately heard and reserved for orders on 01.09.2015.

A perusal of the complaint shows a statutory legal notice for the cheque routed from the account of the accused (not even in dispute now in the quash petition) for it is dishonoured, served on the accused drawer of the cheque covered

by acknowledgment which was with no proper reply. Infact the Apex Court in ***Rangappa Vs. Mohan***, the three Judge Bench clearly laid down that once there is a cheque returned from the account of the accused not in dispute there is a statutory presumption of cheque issued is for legally enforceable debt or for liability under Section 139 of N.I. Act to draw besides presumptions under Section 118 of N.I. Act that the cheque issued is as a negotiable instrument for consideration and bears on it the date of issue and in favour of the payee and by the drawer as duly issued. It was held in the expression of Rangappa's case (supra) that burden is on the accused for the reverse onus clause to rebut the response, explaining the earlier proposition in ***KRISHNA JANARDHAN BHAT v. DATTATRAYA G. HEGDE*** and reiterated the earlier proposition in ***NARAYAN MENON v. STATE OF KERALA*** and several other expressions in this regard laid down by the Apex Court earlier.

The contentions in the quash petition not even in answering to say the cheque was not routed from the account of the accused and the cheque is not bearing her signature. She infact issued reply as one of the enclosures to the statutory notice dated 18.11.2014 served on 25.11.2014 for the dishonour of the cheque demanding to pay the amount, that her daughter's marriage going to be celebrated on 17.12.2014 and she and her family members are busy therewith and unable to contact an advocate and draw attention to cause issue reply and a detailed reply could be given within 20 days of the said marriage date. She did not say from the said reply also that cheque not routed from her account nor it bears her signature. The other contentions would show there is no legally enforceable debt or other liability, thereby the calendar case is liable to be quashed as the claim of Rs.3,00,000/- still as professional fees and other legal expenses despite Rs.10,00,000/- already paid and the claim of the fees on percentage basis is in violation of the advocate Rules and conduct Rules and thereby the same is unenforceable and against the public policy and the complaint is liable to be quashed. One of the enclosures is decree in O.P.No.152 of 1999, dated 02.08.2002 claiming compensation under Section 166 of the Motor Vehicles Act by the five petitioners including the first petitioner B.Sunitha on the death of late Venkata Ramana, the claimants along with her two minor daughters, the parents of late Venkata Ramana against the driver and owner and the insurer of the Jeep MH 5K 5016 show claim made for Rs.1,50,00,000/- and the advocate for the claim was one Sri T.Sharath and

Court fees paid was Rs.1,49,000/- under Rule 475 of A.P.Motor Vehicles Act on 03.09.2002 vide S.R.No 3242 of 2002, after the decree pursuant to Court fee, the temporary execution order in I.A.No.1756 of 1999 of the claim petition filed on 07.12.1998 and the tribunal on 25.01.1999 and the compensation awarded was Rs.64,88,000/- with 9% interest of which first claimant Smt.Sunitha entitled to 40% compensation and the two minor children 20% each and the parents of the deceased 10% each and to deposit the minor's amount in fixed deposit till they attain the age of majority and permitted the claimant to withdraw Rs.5,00,000/-, to invest remaining share in deposit. The petitioner filed a Bank Statement of account of the said second claimant minor Sahiti D/o.Sunitha running from 23.10.2013 to 14.11.2013 of Sahiti by then major showing from the account of Sahiti on 14.11.2013 in favour of the advocate Sri T.Sarath cheque bearing No.740612 of Rs.2,00,000/- cleared. The other account of Sunita in Andhra Bank from 17.09.2014 to 27.09.2014 shows that cheque bearing No.755369 for Rs.3 lakhs in the name of said Sarath clearance made on 27.09.2014. The present cheque is bearing No.755370 dated 25.10.2014 whereas the cheque cleared from the account of Sunita on 27.09.2014, cheque drawn in the name of Sri T.Sarath as payee was 755369. There is another Bank account statement filed on Smt.Sunita showing from January, 2006 to July, 2006 whereunder on 09.01.2006 Rs.1,30,000/- drawn by the cheque bearing No.407984 by the payee Sri T.Sarath, Advocate and again on 16.05.2006 by another cheque bearing No.412990 of Rs.1,45,000/- drawn by Sri T.Sarath, Advocate. Besides the above, there is email from GMail account of said Sarath to vijaykgavuji@gmail.com, dated 04.12.2014 showing forwarded message attached, so also with said O.P.No.152 of 1999 sunita, so also another message on 02.11.2014 from Gougi Nagaraju to Sarath and details would show decree total amount of Rs.64,88,000/- with interest of 9% per annum upto 11.11.2002 which comes to interest of total Rs.88,48,050/- share on Sunita 40% besides on two daughters total 40% and the parents total 20% and the amount deposited by Insurance Company Rs.20,00,000/- plus 7.5 lakhs plus Rs.85,73,880/- and the balance Rs.37,06,664/- respectively on 03.02.2003, 28.12.2004 and 28.06.2013 to his total amount deposit Rs.1,13,23,830/- therein. The share of Sunita and the two daughters comes to Rs.90,59,064/-. Remaining Rs.22,64,776/- amount on parents of deceased and that the total amount paid to the advocates was on 13.05.2006 to Rs.1,45,000/- (referred supra by cheque), 06.06.2006 Rs.1,30,000/-(referred supra from the account), 04.10.2013 Rs.2,00,000/- including Rs.1,00,000/- to G.N.Raju, on

12.11.2013 Rs.2,00,000/- and on 27.09.2014 Rs.3,00,000/- plus Rs.3,00,000/- due since cheque dishonoured, hence the total payable of 16% on Rs.90,59,064/-_that comes to Rs.14,49,450/-. In saying same out of Rs.14,49,450/- total minus Rs.9,75,000/- (which includes cheque amount of Rs.3,00,000/- come to Rs.4,64,450/-. These documents placed reliance by the counsel for quash petitioner/accused Smt.Sunitha. In support of the contention, additional material filed by her is the A.P.Advocates' Fee Rules 2010 of Sub-ordinate Courts Clause 5 is placed reliance saying in all money suits, the fees to be calculated @ 10 % of the claim which does not exceed Rs.10,000/- . Where as the claim made in the E-Mail message referred supra is for a total of Rs.14,49,450/- and already shown by 27.09.2014 paid only Rs.9,75,000/- other than the cheque claim of Rs.3,00,000/- . It is therefrom submitted that the fee collected is contrary to the Advocate Rules thereby not entitled and it is an act nowhere be called as legally enforceable debt or other liability. In support of it in C.C.No.1 of 2015 for the cheque dishonoured, Section 251 Cr.P.C. examination answers to the question filed dated 18.05.2015 showing fees already paid Rs.3,00,000/- to her and no amount is due and thereby pleaded not guilty. A suit O.S.No.975 of 2015 filed by Sharath, advocate in XXII Junior Civil Judge Court, Hyderabad against said Sunita for recovery of the said cheque dishonoured amount apart from other claims if any and sought in I.A.No.102 of 2015 attachment before judgment in making a claim that it is a part of the amount due for the professional charges as well as Court expenses upto Supreme Court. After deduction of part of the amounts paid in showing besides the cheque amount a further sum of Rs.5,00,000/- due and she filed counter dated 11.06.2015 in opposing the petition for attachment before judgment propounding the present quash petition defence.

No doubt as pointed out by the counsel for the quash petitioner in the decree of the trial Court in O.P.No.152 of 1998, the Advocate fees fixed by the Court is only Rs.2,000/-, decrees of other Courts that is High Court and Supreme Court not before this Court. The advocate fees Rules fixed by the High Court nowhere speaks any penal consequences claimed beyond much less to say same is illegal. Under Section 23 of the Indian Contract Act, the consideration or object of a claimant is lawful unless it is forbidden by law (covered by Sections 26 to 28 and 30) or is of

such nature that if permitted it would defeat the provisions of any law or is overtured or involves or implies, injury to the person or property of another or the Court records it as immoral or opposed to public policy. In each of these cases the consideration or object of a claimant is said to be unlawful. Every agreement of which the object or consideration is unlawful is void. So far as Advocate Fees Rules report of 2010 placed reliance by the quash petition concerned, in addition to what is discussed supra, the fees rules fixed in subordinate courts in M.V.O.P. is the maximum fees. Once there is no any order either from the Advocate Fees Rules or otherwise on fees beyond and cannot be claimed, it cannot be said any claim beyond what is fixed is forbidden by law. In fact a Division Bench of this Court that is reiterated by another Single Judge of this Court laid down that Advocate fees Rules are only guidance for collection of the Advocate fees as private expenses awarded against another or opposite party and not at all the yardstick for fixing of fees between advocate and client that is orbital against any claim beyond what is fixed therein. Once such is the case where the fee is demanded and the cheque issued is part of such advocate fees and other legal expenses of the litigation crop up to the Apex Court, it is the insurance company that unsuccessfully maintained the appeals before the High Court and Supreme Court against the award of the tribunal at Hyderabad and the quantum and interest since impugned that is attested on behalf of her by the said advocate in the High Court and by engaging advocate in Supreme Court irrespective of the contention that the Supreme Court appeal of the insurance company ended in default dismissal and not on merits disposal, the engaging of the advocate in Apex Court on behalf of the respondent claimant not in dispute. Apart from it, once there is a reverse onus clause, burden on the accused to rebut the presumptions to support the defence of any legally enforceable debt or other liability that is the matter to be decided in the cheque bounce case by the learned Magistrate where the case is pending. It is needless to say under Sections 138 read with Section 143 of the Negotiable Instruments Act, the proceedings can be conducted as summary even the nature of case is numbered and proceeding as summons case and not as summary trial case. It is needless to say further as per Section 259 of the Cr.P.C., the learned Magistrate may convert the summons case into warrant case as the offence under Section 138 of Negotiable Instruments Act is punishable upto 2 years and even under Section 143 if tried summarily maximum punishment that can be imposed is of one year besides unlimited fine. No doubt if it appears in the interest of justice to try with the procedure of trial of warrant case, can rehear and try

as a warrant case, if necessary by recalling any witness. Such contingency arises to decide and adjudicate all the disputed questions in the case on hand by trial Court. However, it is not a ground to urge in quash petition that under Section 143 of Negotiable Instruments Act, procedure to be adopted is summary, even in the summons case, the Magistrate is proceeding and all these factual aspects are not possible to adjudicate there. Such contention by either side is un-tenable in view of the enabling provisions under Section 259 of Cr.P.C for the learned Magistrate if necessary to convert the summons case into warrant case and to proceed with, to decide all the factual disputes as it is the forum to decide that to discharge of such burden is on the accused under the reverse onus clause to show that the debt is either un-enforceable or for any other defence of the criminal prosecution for the dishonour of cheque unsustainable. It is also for the reason including from the recent expression of the Apex Court in HMT case that the Court under Section 482 of Cr.P.C. cannot conduct any roving enquiry into disputed question of facts required to be decided by a trial Court, much less arrive any finding in premature. The counsel for quash petitioner placed reliance on the expression of the Madras High Court in ***C.Manohar Vs. B.R.Purnima***, which is a case under Section 138 of N.I. Act where towards legal fees and expenditure payable for conducting the case, accused issued Ex.P1 Cheque for Rs.43,600/- dated 16.03.1993 to clear the liability and the cheque presented was returned dishonoured for in-sufficiency of funds from which the cheque bounce case filed. It was the contest therein that no amount is payable and amount already paid for what is due. The trial Magistrate ultimately found no legally enforceable debt or other liability with the finding that no amount is payable on the cheque. From which the appeal when filed before the High Court under Section 378 of Cr.P.C., the High Court held that for the facts not in dispute, the accused client engaged the complainant as advocate for death of her husband in a road accident case to make the compensation claim and the case on hand is an example of present day trend of legal profession. Though it is service oriented in putting forth the case of a client before authorities without record to remuneration received or to be received and from growth of litigation, gradually legal profession became full time occupation and the trend has changed and now it has almost become a trade and is no more service orientated and the relation between lawyer and client is one of the trust and confidence. It is observed further that to attract the penal provision of Section 138 of NI Act, the has shown drawn from the account of accused maintained with the Bank for payment of any debt or other liability due and

the cheque given for any other reasons not for the satisfaction of any debt or other liability even it is returned unpaid will not meet penal consequences. It was observed that in the absence of any agreements, the cheque issued cannot be said to have for discharge of any substantial debt or liability. Nothing shown by complainant of debt paid, stamp duty and of the legal fees and not produced any agreement as to the arrangement thereby the presumption in favour of the complainant under Section 139 that could be drawn as per the law not drawn as complainant being an advocate has not proved the debt amount payable to him by accused and engaged him as lawyer to conduct the case and thereby the finding of the trial Court does not suffer for any interference that too as per the settled law, the appellate Court must be slow in reversal of trial Court's judgment. Infact from its proposition, there is no conclusive finding laid down on presumption under Section 139 cannot be drawn if the cheque issued by the client to the advocate towards fees and expenses, but for saying on the factual matrix of no agreement filed and not proved by the advocate of what are the expenses besides what is the fees due. There is also not decided as to only advocate fees rules is the yardstick and beyond that no fees to be claimed. It is not even decided whether any such agreement under Contract Act is unenforceable and if so on what criteria. Thereby the decision noway helpful at this stage in seeking to quash the proceedings, but for at best of use before the trial Court as part of any defence version in discharging the burden by accused under reverse onus clause. Having regard to the above, this Court cannot go into the disputed factual aspect to quash the C.C. proceedings but for left open to the both sides to agitate before the trial Court, in view of the matter to be decided by trial Court and on the limitation against this Court in a quash petition in going into the detailed factual disputed aspects. Thus, none of the observations herein shall prejudice any of the rights of the parties particularly of the accused in defence before the trial Court, for disposal of the case on merits after full dressed trial.

Accordingly, the Criminal Petition is disposed of. The interim stay passed seizes its force for the trial Court to proceed with the trial for disposal on merits.

Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall

stand closed.

Dr. B.SIVA SANKARA RAO J

Date: 14.10.2015

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