THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1178 of 2015

ORDER:

1. This Criminal Revision Case is filed by the petitioner-accused aggrieved by the order dated 22.6.2015 passed in Crl.M.P.No.608 of 2015 in C.C.No.79 of 2015 by the V Special Magistrate, Kukatpally, Miyapur, Cyberabad, Ranga Reddy District.

2. The petitioner is facing trial in the above C.C. for the offence under Section 138 of the Negotiable Instruments Act. It is alleged in the complaint that while entering into the service agreement, the petitioner undertook to pay certain amounts to the complainant, if he commits breach of terms of the service agreement, and that subsequently, having committed the breach of terms, the petitioner issued the said cheque and settled the matter and having issued the same, the petitioner started disputing the same with a malafide intention to escape from his liability under Section 138 of the Negotiable Instruments Act.

3. When the above C.C. was posted for evidence on behalf of the complainant, the petitioner-accused filed the above Crl.M.P. under Section 251 and 258 Cr.P.C. seeking to discharge him from the proceedings in the above C.C. The said application was dismissed by the trial Court. Hence, the petitioner filed this revision.

4. The case of the petitioner is as follows:

The 1st respondent-complainant offered job to the petitioner as a Functional Consultant Trainee and the 1st respondent entered into Service agreement on 24.9.2012 with the revision petitioner and in the said agreement, various clauses and conditions therein are incorporated by the petitioner and the 1st respondent-complainant. At the time of entering service agreement, the 1st respondent-complainant insisted undated cheque from the petitioner. Accordingly, the petitioner handed over the undated cheque bearing No.025742 for Rs.6,50,000/- drawn on ICICI Bank, Gachibowli Branch, Ranga Reddy District as a security/guarantee purpose. The 1st respondent-complainant agreed to return the said cheque to the petitioner as and when the petitioner stops working in the company. As per the terms of the agreement, the 1st respondent-complainant agreed to pay salary to the petitioner every month as against the service rendered by him. But the 1st respondent-complainant failed to make payments regularly. When the 1st respondent-complainant asked the petitioner not to attend duties, the petitioner insisted for payment of salary due to him. Then, the 1st respondent-complainant presented the cheque and got it dishonoured and filed a complaint against the petitioner for the offence under Section 138 of the Negotiable Instruments Act.

5. Further, it is the case of the petitioner that the cheque in question was not issued for discharge any legally enforceable debt and the 1st respondent-complainant is not entitled to present the same for encashment and in fact, the 1st respondent-complainant has to pay an amount of Rs.25,71,640/- to the petitioner towards arrears of salary due to him.

6. The main grievance of the petitioner is that the relationship between the petitioner and the 1st respondent-complainant is employee and employer and at the time of joining duty as employee in the company, he entered into agreement with the complainant and as per the terms of the agreement, he issued the undated cheque as security purpose. He left the company and as there was dispute with regard to payment of salary due to the petitioner to a tune of Rs.25

lakhs, the petitioner approached this Court for appointment of Arbitrator.

7. The learned Magistrate dismissed the application on the ground that the substance of accusation was explained to the accused and his plea was recorded and at that stage, it is not open for the accused to seek discharge as the offence under Section 138 of the Negotiable instruments Act is being triable in a summary way by following procedure covered by Chapter XX, which does not contemplate a stage of discharge.

8. It is the contention of the learned Counsel for the petitioner that Section 258 Cr.P.C. applies in this case because there is no iota of document filed by the 1st respondent-complainant to show that there is a legally enforceable debt or liability.

9. Admittedly, the above C.C. has been coming up for recording evidence on behalf of the 1st respondent-complainant. At that stage, the ground raised by the petitioner that no document was filed by the 1st respondent-complainant to substantiate the legally enforceable debt against the cheque in question, cannot be sustained. Prior to commencement of trial, the application filed by the petitioner to stop the proceedings on the ground of non-production of any document, is a premature one.

10. After perusing the order under revision and hearing the arguments, this Court is of the view that the order under revision does not suffer from any illegality or irregularity warranting interference by this Court and therefore, this Court is not inclined to interfere with the order under revision. However, in view of the contentions raised by the learned Counsel for the petitioner with regard to the issue in question, this Criminal Revision Case is disposed of with the following direction:

> "The petitioner is at liberty to file an application before the trial Court by invoking the same provisions, after recording the evidence on behalf of the complainant, if he is so advised. On such application being filed, the trial Court is directed to consider the chief and cross-examination of the witnesses on behalf of the complainant and the answers elicited in their cross-examination, and pass appropriate orders in accordance with law."

Consequently, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated: 3rd July, 2015
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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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<u>CRIMINAL REVISION CASE No.1178 of 2015</u>

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