

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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CRIMINAL PETITION No. 3631 OF 2015

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ORDER:

The instant Criminal Petition is filed by the petitioner – accused under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') requesting to quash the proceedings in C.C. No.305 of 2014 on the file of the Special Magistrate Court – III, Visakhapatnam for the offence under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act').

2 . The facts, in brief, are that the 2nd respondent herein filed a private complaint before the Special Magistrate Court – III, Visakhapatnam against the petitioner herein for the offence punishable under Section 138 of the Act, and the learned Magistrate having observed due formalities, registered the said complaint as C.C. No.305 of 2014. The allegations levelled are to the effect that the petitioner herein, who is accused in the said Calendar Case, alleged to have borrowed a sum of Rs.5,00,000/- (Rupees five lakhs) on 26-01-2010 at the residence of the

2nd respondent – complainant for his family necessities and to clear sundry debts and, in token thereof, executed a demand promissory note, agreeing to repay the same with interest at 24% per annum.

i) Subsequently, in discharge of the said loan, the petitioner herein alleged to have issued a cheque bearing No.688451, dated 09-05-2012 for a sum of Rs.5,00,000/- drawn on ING Vysya Bank, Shanthipuram Branch, towards part payment of the said promissory note debt, and the 2nd respondent - complainant presented the said cheque on 09-05-2012 through his banker i.e., Canara Bank, Dwarakanagar Branch, Visakhapatnam for encashment, but the same was returned unpaid by the Banker of the petitioner through return memo, dated 10-05-2012 with an endorsement 'Account Closed'.

ii) Thereafter, the 2nd respondent got issued a notice, dated 17-05-2012, which was received by the petitioner on 21-05-2012, and it stood unanswered. Hence, the complaint.

iii) Learned counsel for the petitioner, while referring to the cross-examination portion of the 2nd respondent examined as PW.1 and quoting some of the answers given in the cross-examination, states that the 2nd respondent is a money lender and doing money lending business without holding any license and charging heavy interest to a tune of 5% to 7% per month and filed about fifty (50) cheque bounce cases, out of which, 25 cases were disposed/allowed/compromised and the remaining cases are still pending. It is also stated that one Gadde Srikar, a close relative and *be nami* of the 2nd respondent, had also filed considerable cheque bounce cases and Civil Cases, and even referred to the counsel's name in the averments of the criminal petition. Certain instances are also mentioned in the instant criminal petition with relevant details of cases pending before the concerned Courts and the amounts said to have lent by the 2nd respondent herein.

iv) The learned counsel for the petitioner on the ground that the debt herein cannot be construed as a legally enforceable debt, since the 2nd respondent did not possess money lenders license issued by a competent authority, sought to quash the proceedings in the above Calendar Case.

3. The learned counsel for the petitioner has also filed photostat copy of cross-examination portion of the 2nd respondent – complainant examined as PW.1 which is thus:

“I know all the contents of my evidence affidavit. I am doing real estate business. I know one Benarji. The accused and the said Benarji did real estate business jointly. In my real estate business I got acquaintance with the accused. I don't know whether the accused and Benarji separated from joint business recently. I gave the amount to the accused by way of cash. I am not an income-tax assess. In the year 2010 I used to get Rs.50,000/- per month in my real estate business. There is no name for my real estate business. I

have no documentary proof to show my income in my real estate business since year 2010 to file before the court. The witness adds that he also got some agricultural land and he is also getting income on that land. No document is filed before the court to show that I got some agricultural land and I am receiving income on that land. It is not correct to suggest that I never gave any money to the accused and there are no money transactions between me and the accused and when the accused and Benarji in view of the disputes in their joint business and separated, the said Benarji giving the blank papers available with him to me and got filed this complaint against the accused to take revenge against him. I am not doing any finance business but lending money to the know persons. In the presence of P.S. Rama Rao (Attester) and G. Ram Mohan Rao (Scribe) I gave money to the accused. I didn't withdraw any cash from any bank and I gave the cash available in my house to the accused. I have filed 10 or 12 cheque bounce cases and civil suits. The witness adds that 5 or 6 cases are already compromised. It is not correct to suggest that the accused is not liable to pay any amount to me and debt is due from him and this complaint is not maintainable. I don't know whether the account of the accused was closed in the year 2009."

4. In fact, when the petitioner herein wants to rely on a particular document, whole document has to be filed, but not a part thereof, and that too, an authenticated copy i.e., invariably a certified copy and not just filing a photostat copy of a portion of the deposition. Even, giving allowance to the said short infirmity, still, looking into the deposition of PW.1, in his cross-examination, as extracted in the above, in case the 2nd respondent – complainant did not really possess or obtain a valid money lender's license from the competent authority, as contemplated by the provisions of Section 4 of the Prevention of Money-Laundering Act, 2002, the same can be canvassed before the trial Court, where the trial is in progress. It is according to the learned counsel for the petitioner that, the evidence is closed on behalf of the complainant -

2nd respondent and it is coming up for the accused - petitioner's side i.e., to lead evidence by the petitioner in the instant criminal petition.

5. The learned counsel, of course, relied on a judgment of the High Court of Bombay, Bench at Aurangabad in Criminal Application No.630 of 2009 in Criminal Appeal (Stamp) No.139 of 2009, wherein the provisions of Section 5 of the Bombay Money- Lenders Act, 1946, was referred to in the context of offence punishable under Section 138 of the Act. While explaining the meaning 'debt or other liability' and observing that a loan advanced by a money lender, who was doing business of money lending without license, is not a debt or other liability, held that the provisions of Section 138 of the Act will not apply to such transaction.

6. In the instant case, the petitioner can take the aid of the aforesaid judgment and place for perusal of the trial Court during the course of arguments, more particularly, when the answers elicited from PW.1 in his cross-examination relate to the real-estate business, and even the answer given by PW.1 is only to the effect that he was not doing any finance business, but lending money to the known persons, but there is no direct answer from him that he did not possess money lending license to lend the amounts. Therefore, the ground taken by the petitioner herein is

a ground that can be agitated before the trial Court for adjudicating upon the controversy in the light of answers given by PW.1 and the decisions to be relied on by the petitioner herein. So, it is difficult, at this stage, to hold that the prosecution proceedings in the said Calendar Case, is abuse of process of law. Hence, the petition stands dismissed. It is needless to mention that the trial Court shall dispose of the Calendar Case on merits uninfluenced by the observations, if any, made by this Court.

7. With the above observations, the Criminal Petition is dismissed.

8. As a sequel thereto, miscellaneous petitions, if any, pending in this Criminal Petition, stand disposed of.

A. SHANKAR NARAYANA, J

April 28, 2015.

Mgr