THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.5988 of 2014

ORDER:

Petitioner/accused seeks quashment of the proceedings in C.C.No.517 of 2014 on the file of learned Additional Judicial Magistrate of First Class, Karimnagar.

2) The complainant filed C.C.No.517 of 2014 on the allegation that accused and one Mohammed Abdul Rauf purchased Ac.26.31 gts. of agricultural land from her for sale consideration of Rs.2 crores and paid an amount of Rs.50 lakhs in cash and issued 5 post dated cheques for the balance amount, the complainant on 30.12.2013 deposited the cheques bearing Nos.607912 and 607914 in Oriental Bank of Commerce, Makarampura, Karimnagar and the same were dishonoured on 31.12.2013 for the reason "*funds insufficient*" and later the complainant presented the remaining three cheques bearing Nos.607913, 607915 and 607916 on 09.01.2014 in Oriental Bank of Commerce and they were dishonoured with the endorsement "*payment stopped by drawer*" . Hence the complaint by the complainant.

3) Challenging the complaint allegations, learned counsel for petitioner/accused submitted that it is true that the accused purchased Ac.26.31gts. of agricultural land from complainant for sale consideration of Rs.2 crores and paid an amount of Rs.50 lakhs and issued 5 post dated cheques

for the balance amount. However, the complainant failed to deliver physical possession of the property in respect of schedule A to D properties despite payment of Rs.50 lakhs and cheques. At the time of oral agreement it was agreed between the parties that though symbolic possession was given for the time being, the complainant would take steps to deliver peaceful possession of the land by clearing all civil litigations and she would present the cheques only thereafter. Further, the accused filed O.S.No.183 of 2013 on the file of Senior Civil Judge, Karimnagar seeking relief of perpetual injunction against some third parties who were illegally claiming ownership over the sale deed mentioned properties and the said suit is pending. Complainant is fully aware of pending civil suit. She assured to clear the disputes and deliver the physical possession of the property. However the complainant cheated the accused and presented the cheques without informing him. Learned counsel thus argued that in these circumstances the cheques issued by the accused shall not be treated as issued towards discharge of any legally enforceable debt and therefore, proceedings in C.C.No.517 of 2014 are liable to be quashed since they amount to sheer abuse of process of law.

4) Opposing the petition, learned counsel for respondent/complainant argued that in view of admission by the accused about the issuance of cheques towards part of

the sale consideration, the presumption under Section 139 of Negotiable Instruments Act, 1881 (for short "NI Act") shall follow to the effect that cheques were issued for discharge of legally enforceable debt and the burden will be on the accused to rebut the presumption by placing cogent evidence and if it is his contention that the delivery of possession was not given to, he has to establish the same during the trial in criminal case but he cannot take recourse of said plea to seek quashment of proceedings. He vehemently argued that in a petition under Section 482 Cr.P.C. the High Court cannot make a rowing enquiry as to the fact whether the cheques was issued in discharge of legally enforceable debt or not to quash the proceedings. On this proposition he relied upon the decision of the Apex Court reported in ***M.M.T.C. Limited vs. Medchal Chemicals and Pharma (P) Limited***[1]. He thus prayed to dismiss the petition.

5) In the light of above rival arguments, the point for determination is:

"Whether there are merits in this petition to allow?"

6 a) **POINT:** The admitted facts appearing from the pleadings are that the accused purchased Ac.26.31 gts. from the complainant for sale consideration of Rs.2 crores and paid Rs.50 lakhs and issued 5 post dated cheques for different amounts towards part of the sale consideration and

when the cheques were presented by the complainant two of them were dishonoured as "*funds insufficient*" and remaining due to *stop payment order* issued by the drawer. Be that it may, the main ground on which the accused seeks quashment of proceedings is that the complainant while receiving Rs.50 lakhs and cheques, gave only symbolic possession but not khas possession and she promised that she would clear all the litigations shrouding the property and then only present the cheques for encashment and in fact when some third parties unlawfully claimed title and possession over the suit property the accused filed O.S.No.183 of 2013 on the file of Senior Civil Judge, Karimnagar against them and the said suit is pending and in spite of knowing this fact the complainant with a deceitful intention presented the cheques without intimating to the accused and therefore, the cheques cannot be termed as having issued for discharge of any legally enforceable debt since the complainant failed to discharge her part of obligation.

b) This Court is unable to agree with the above contention. As rightly argued by the complainant when a cheque is admittedly issued by the drawer, the presumption under Section 139 of NI Act follows as below:

> **"139 . Presumption in favour of holder:**
>
> *It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in*

part, of any debt or other liability."

Therefore, the presumption that the cheques were issued for a legally enforceable debt comes into play at once. Of course, it being a rebuttable presumption, the accused will be at liberty to dispel the presumption by placing cogent material. However, as the same can be done only during the course of trial in the concerned criminal case, the contention that the cheques were not issued for a legally enforceable debt cannot be entertained and determined in the proceedings under Section 482 Cr.P.C. This proposition was clearly laid down by the Honourable Apex Court in the cited decision in ***M.M.T.C. Limited***'s case (1 supra) wherein it observed thus:

> *"The learned Judge has next gone into facts and arrived at a conclusion that the cheques were issued as security and not for any debt or liability existing on the date they were issued. In so doing the learned Judge has ignored well settled law that the power of quashing criminal proceedings should be exercised very stringently and with circumspection. It is settled law that at this stage the Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. At this stage the court could not have gone into .merits and or come to conclusion that there was no existing debt or liability."*

c) So, at this stage, it is neither apposite nor feasible for this Court to enquire into whether the cheques were issued for legally enforceable debt or not. So, on point of law the request for quashment cannot be accepted. Even on factual side also it cannot be considered for the reason that a perusal of the pleadings in the plaint in O.S.No.183 of 2013, a copy of which is filed herein, would show that the accused took the plea that he purchased the suit land from the complainant and she put him in actual possession and he has been in continuous possession thereof since from the date of purchase. This is quite repugnant to his stand in the present petition. So, the plea of non-delivery of possession and existence or non-existence of legally enforceable debt etc. have to be decided only after a full-fledged trial in C.C.No.517 of 2014.

7) As the matter stands, there are no merits in the petition. Accordingly this Criminal Petition is dismissed.

As a sequel, Miscellaneous Petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 06.02.2015

Murthy

---

[1] (2002) 1 SCC 234