

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.5300 of 2015

ORDER:

_____ This petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.2027 of 2014 on the file of the III Additional Chief Metropolitan Magistrate at Nampally, Hyderabad.

2. The contention of the learned counsel for the petitioner is two fold: (1) Out of the same transaction, the second respondent filed one case under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the N.I.Act") and another case under Sections 406, 420 and 506 I.P.C., (2) Two criminal cases are not maintainable out of the same transaction.

3. *Per contra* the learned counsel for the second respondent submitted that the second respondent filed C.C.No.71 of 2015 under Section 138 of the N.I. Act in respect of cheques bearing Nos.283485, 283486 and 483460, dated 07.04.2014 and 07.10.2014 respectively. He further submitted that the transaction in C.C.No.71 of 2015 is entirely different to the transaction in C.C.No.2027 of 2014.

4. A perusal of the record reveals that the petitioner issued cheques bearing Nos.283485, 283486 and 483460, in favour of the second respondent, for an amount of Rs.14,10,000 on 07.04.2014 and 07.10.2014. The second respondent presented the cheques, which were returned with an endorsement of 'insufficient funds'. After following the procedure as contemplated under Section 138 of the N.I. Act., the second respondent filed C.C.No.71 of 2015 on the file of the IV Special Magistrate, City Civil Court, Hyderabad.

5. Basing on the complaint lodged by the second respondent, the Station House Officer, Sanjeevareddy Nagar Police Station registered a case against the petitioner in Crime No.367 of 2014 for the offences

punishable under Sections 406, 420 and 506 I.P.C. After completion of the investigation, the investigating officer laid charge sheet against the petitioner for the offences punishable under Sections 406, 420 and 506 I.P.C. The learned Magistrate, after satisfying himself with the material placed before him, has taken the cognizance of offences under Sections 406, 420 and 506 I.P.C. against the petitioner.

6. In order to appreciate the contention of the learned counsel for the petitioner, I have carefully perused the material placed before this Court. The fact remains that the petitioner has issued number of cheques in favour of the second respondent.

7. As per the allegations made in the charge sheet, the petitioner issued cheques bearing Nos.283468, dated 21.07.2012 for an amount of Rs.3,00,000/-, 283467, dated 20.07.2012 for an amount of Rs.50,000/-, 511117, dated 30.06.2012 for an amount of Rs.30,000 and 511116, dated 30.06.2012 for an amount of Rs.3,00,000/- in favour of the second respondent. The case of the second respondent is that the petitioner issued the above cheques with an intention to deceive him. Whether the petitioner has issued the said cheques with an intention to cheat the second respondent or not has to be decided during the course of trial only. It is a settled principle of law that while taking cognizance of offences the Court has to consider the allegations made in the charge sheet. The investigating officer has not committed any illegality or irregularity during the course of investigation. Nothing is brought on record to establish that the learned Magistrate has committed illegality while taking cognizance of offences against the petitioner for the offences punishable under Sections 406, 420 and 506 I.P.C. The material available on record is *prima facie* sufficient to proceed further against the petitioner. If this Court expresses any opinion touching the merits of the main case, the same may cause prejudice to one of the parties to the proceedings. Whether the cheques referred supra were issued by the petitioner in respect of the

same transaction or not will come to light during the course of trial only. The various queries raised by the learned counsel for the petitioner involves complexity of disputed questions of fact which require full-fledged trial. The various contentions urged by the petitioner falls outside the purview of Section 482 Cr.P.C.

8. 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.”

9. 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.

10. 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.

11. Hence, the Criminal Petition is dismissed.

12. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

-

T.SUNIL CHOWDARY, J

Date: 10.12.2015

lvd

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

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