THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16605 OF 2016

ORDER:

This petition is filed under Section 482 Cr.P.C. by a poor man, who allegedly own house worth Rs.62,00,000/- and issued a cheque for Rs.11,19,000/-, questioning the proceedings in C.C.No.699 of 2016 on the file of III Chief Metropolitan Magistrate, Vijayawada, Krishna District, registered for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act'), on two grounds, firstly, that the petitioner discharged the entire debt together with interest at 48%, though, the agreed contractual rate is 12%, second, at the time of borrowing amount by hypothecating the vehicles, the respondent - Company took signature of the petitioner on blank Promissory Notes and Cheques and by retaining those Cheques even after discharge of the debt, presented them for collection and after dishonour, filed the present case, which is nothing but an abuse of process of Court.

2. During hearing, Sri Tata Babu Nath, learned counsel for the petitioner, would contend that the respondent - Company indulged in several illegal activities and it consists of more than five partners and that it is case of "call money" and petitioner along with others filed W.P.No.28183 of 2016 before this Court. It is further contended that the respondent - Company filed the complaint against the petitioner for the offence punishable under Section 138 of the Act

alleging that the petitioner issued an account payee cheque for Rs.11,19,000/- on 16.07.2016 towards discharge of the legally enforceable debt and on presentation, as the cheque was dishonoured on the ground of 'insufficient funds', the payee bank issued a memo on 19.07.2016. Thereupon, the respondent - Company got issued notice, dated 03.08.2016, in compliance of Section 138 (b) of the Act calling upon the petitioner to pay the amount covered by the Cheque within the specified time and the petitioner got issued reply, but failed to pay the amount covered by the Cheque.

3. The first contention of the petitioner before this Court is that he borrowed amount from the respondent - Company, but discharged the same together with interest at 48%, though the agreed contractual rate of interest is 12%. The alleged discharge is a disputed question of fact and this Court, while exercising power under Section 482 Cr.P.C., cannot decide the disputed question of fact and the disputed questions of facts can be decided only after trial and not at this threshold of trial in Calendar Case.

4. The second contention of the petitioner is that the respondent – Company obtained his signature on blank Promissory Notes and Cheques after borrowing the amount, but even after discharge also, it retained those Promissory Notes and Cheques and misused those cheques and presented them for collection, which

were dishonoured. A perusal of the notice, dated 17.11.2016, got issued by the petitioner through his counsel, Sri P. Venkatappaiah, establishes that the petitioner borrowed amount from the respondent – Company, but he pleaded discharge of the same on two occasions i.e., Rs.10,50,000/- on 02.04.2013 and Rs.6,00,000/- on 10.04.2012. But, in the said notice, there is no whisper about handing over of blank singed Promissory Notes and Cheques to the respondent - Company. Moreover, it is a disputed question of fact, which this Court cannot decide while deciding an application under Section 482 Cr.P.C. Even assuming for a moment that the cheques were issued as security for payment of future instalments, in view of the presumption under Section 139 of the Act, the cheques shall be presumed to be issued towards discharge of legally enforceable debt and that presumption can be dispelled only during trial either by eliciting something in the cross-examination of the witnesses examined by the complainant or by examining any independent witnesses by the petitioner and such question cannot be decided at this stage. An identical case came up before the Honourable Apex Court in **Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.**[1], wherein the Honourable Apex Court decided questions of facts similar to the present case and held that this Court cannot exercise power under Section 482 Cr.P.C. when there is disputed question of fact, which can be

[1] AIR 2016 SC 4363

decided only during trial. Therefore, by applying the principle laid down in the above judgment, I am afraid to accept the contention of the petitioner, while exercising the power under Section 482 Cr.P.C., so as to quash the proceedings.

5. Yet, in the classic judgment of the Honourable Apex Court in the **State of Haryana and others v. Ch. Bhajan lal and others**[2]**,** the Honourable Apex Court laid down the following seven guidelines for exercise of jurisdiction under Section 482 Cr.P.C.:

> "1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
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> 2. Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
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> 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
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> 4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer

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[2] AIR 1992 SC 604

without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Similarly, in **Indian Oil Corporation v. NEPC India Limited and others**[3], the Honourable Apex Court laid down the following guidelines for exercise of power under Section 482 Cr.P.C.:

"1. The High Courts should not exercise their inherent powers to repress a legitimate prosecution. The power to quash criminal complaints should be used sparingly and with abundant caution.

2. The criminal complaint is not required to verbatim reproduce the legal ingredients of the alleged offence. If the necessary factual foundation is laid in the

[3] 2006 (6) SCC 736

criminal complaint, merely on the ground that a few ingredients have not been stated in detail, the criminal proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is bereft of even the basic facts which are absolutely necessary for making out the alleged offence.

3. It was held that a given set of facts may make out (a) purely a civil wrong, or (b) purely a criminal offence or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence."

6. But, the present case would not fall within any one of the guidelines mentioned either in the **Bhajan lal**'s case (supra 2) or in **NEPC**'s case (supra 3). Therefore, I am not inclined to quash the proceedings at this stage since there are several disputed questions of facts, which can be decided only during trial and consequently, the petition is liable to be dismissed.

7. In the result, the Criminal Petition is dismissed at the admission stage. Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

December 07, 2016.
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