

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16797 of 2016

ORDER:

This Criminal Petition, under Section 482 Cr.P.C., is filed by the petitioner/Accused to quash the proceedings in C.C.No.118 of 2016 on the file of VI Special Metropolitan Magistrate, Erram Manzil, Hyderabad, initiated against him for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the Act").

2. The petitioner is the sole Accused in C.C.No.118 of 2016. Respondent No.2 had filed a private complaint against the petitioner for the offence under Section 138 of the Act, alleging that the petitioner issued a cheque in lieu of discharge of debt due to him, which, on its presentation, was dishonoured due to insufficiency of funds. After complying with the necessary formalities under Section 138(b) of the Act, filed complaint.

3. The first and foremost contention raised by the learned counsel for petitioner is, that the wife of respondent No.2 is working as Assistant Doctor with the petitioner and due to the friendly relationship, she could have stealthily took away two leaves in the Cheque Book and retained them with her and later presented the same; the second contention raised by the learned counsel for petitioner is, that the signature

and handwriting on the promissory note and cheques etc., are not that of the petitioner, the third contention raised is, that the cheque and promissory note were forged and fabricated documents and that there was no attestation of the petitioner on the promissory note and no security was furnished for the amount mentioned therein and that a rubber stamp was affixed in the date column on the promissory note and that there were several disputes between the parties and, finally, it is contended that the alleged cheque was not issued towards the legally enforceable debt.

4. The first contention of the petitioner that the wife of the 2nd respondent stealthily took away two leaves in the Cheque Book due to the acquaintance, is a disputed question of fact, which cannot be decided by this Court while exercising power under Section 482 Cr.P.C., and the Court is required to record its finding, whether those cheque leaves were stealthily taken away by the wife of the 2nd respondent, only after recording evidence.

5. The other contention is that the promissory note and the alleged cheque are not in the handwriting of the petitioner and they are forged and fabricated documents. While exercising power under Section 482 Cr.P.C., this Court is not expected to record a finding whether the cheque and promissory note bear the signature and handwriting of the petitioner, or whether it is a fabricated and forged one, and it

is a question of fact, which has to be decided only after adducing evidence by both the parties and after appreciating the entire evidence on record produced before the Court.

6. As regards the third contention urged by the petitioner that no person attested the promissory note, it is to be seen that the promissory note is not a compulsorily attestable document and it need not be attested and proved as required under Section 68 of the Indian Evidence Act, 1872, therefore, the same is not a ground to quash the proceedings.

7. The next ground urged by the petitioner before this Court is that no security was furnished for the debt covered by the promissory note. The word 'Promissory Note' is defined under Section 4 of the Act, which reads as follows:

"Promissory note". A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

8. At best, the promissory note requires an unconditional undertaking to repay the debt due under the said note, either to the person or order as and when demanded and no security is required, to construe the document as a promissory note, within the definition of Section 4 of the Act. Therefore, on this ground also, this Court cannot quash the proceedings.

9. The other three contentions raised are, that civil disputes are pending between the parties, affixing of rubber

stamp and the claim of demand of debt due are all disputed questions of fact and no material is placed on record regarding civil disputes with regard to agreement etc., even if any disputes are pending, that is not a ground to quash the proceedings.

10. The last contention raised by the learned counsel for the petitioner is that the said cheques were not issued towards the discharge of legally enforceable debt. But, as per Section 139 of the Act, there is a Statutory presumption that the cheque deemed to be issued in lieu of discharge of legally enforceable debt and as such presumption is rebuttable presumption, the petitioner is entitled to raise such presumption at the time of adducing evidence, independently, or at the time of cross-examination of witnesses by the complainant during trial, but, at this stage, it is difficult to decide, whether the alleged cheque was issued in lieu of discharge of a legally enforceable debt or not?

11. Similar question came up for consideration before the Apex Court in *SAMPELLE SATYANARAYANA RAO v. INDIAN RENEWABLE ENERGY DEVELOPMENT AGENCY LIMITED*¹, wherein the Apex Court held that while dealing with a petition under Section 482 Cr.P.C. to quash the proceedings, the Court has to proceed on the basis of averments in the complaint and the disputed questions of fact cannot be

¹ AIR 2016 SC 4363

adjudicated upon and on the basis of such disputed questions, the Court cannot quash the proceedings pending, for the offence under Section 138 of the Negotiable Instruments Act. The Court also adverted to the Statutory presumption under Section 139 of the said Act and concluded that when the plea of the petitioner in a petition under Section 482 Cr.P.C., is based on a disputed question of fact, the Court cannot exercise its power to quash the proceedings.

12. During the course of arguments, learned counsel for the petitioner has drawn the attention of this Court to a decision rendered by this Court in VEMPATI BALAJI v. D. VIJAYA GOPALA REDDI², which relates to payment and issue of a cheque towards legally enforceable debt.

13. However, in view of the presumption under Section 139 of the Act and the law declared by the Apex Court in SAMPELLE SATYANARAYANA RAO's case (supra 1), the judgment in VEMPATI BALAJI's case (supra 2) needs no further consideration and, therefore, I find no ground to quash the proceedings in C.C.No.118 of 2016 on the file of VI Special Metropolitan Magistrate, Erram Manzil, Hyderabad, taking into consideration the allegations made in the complaint in its entirety and these allegations, on its face value, would constitute an offence punishable under

² 1998 LAW SUIT (AP) 474

Section 138 of the Act, and consequently, the criminal petition is liable to be dismissed.

14. Accordingly, the Criminal Petition is dismissed, at the stage of admission.

M. SATYANARAYANA MURTHY, J

15.12.2016.
Msr



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