

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.2832 of 2010

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioner/accused in C.C.No.561 of 2007 on the file of the Court of the Judicial First Class Magistrate, Miryalaguda, Nalgonda District.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State. None appeared on behalf of the second respondent.

3. The contention of the learned counsel for the petitioner is two fold: (1) The learned Magistrate committed grave error while taking cognizance of offence against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'), and (2) The trial Court has no territorial jurisdiction to entertain the complaint.

4. As per the allegations made in the complaint, the petitioner borrowed an amount of Rs.7,00,000/- from the second respondent on 30.11.2005 and executed a promissory note. The petitioner issued a cheque on 22.03.2007 for an amount of Rs.7,00,000/- in favour of the second respondent drawn on Andhra Bank, Ramnagar Branch, Hyderabad. The second respondent presented the said cheque on 23.04.2007 in Andhra Bank, Dilsukhnagar for collection. As per the banker's memo dated 25.04.2007, the cheque was returned with an endorsement "insufficient funds". On 02.05.2007, the second respondent got issued a legal notice directing the petitioner to pay the amount within the stipulated time, failing which, legal consequences follows. The petitioner received the same and kept quiet. Having no other alternative, the second respondent filed a complaint against the petitioner under Section 138 of the N.I. Act.

5. A perusal of the record clearly reveals that the second respondent filed the complaint against the petitioner under Section 138 of the N.I. Act after following the procedure as contemplated under the N.I. Act. The learned Magistrate, after satisfying himself with the material placed before him, has taken cognizance of the offence against the petitioner under Section 138 of the N.I. Act.

6. The predominant contention of the learned counsel for the petitioner is that the alleged debt is not legally enforceable.

7. If really the alleged debt is not legally enforceable, what prevented the petitioner to issue a befitting reply to the legal notice got issued by the second respondent on 02.05.2007. For one reason or other, the petitioner did not choose to issue reply. Whether the alleged debt is legally enforceable or not is purely a question of fact. For better appreciation, it is not out of place to extract the address of the second respondent given in the complaint, which is as follows:

“Daida Sravan Kumar, S/o. Late Sundaraiah, Aged 25 years, Occupation: Business, R/o. Nakrekal Town, Nalgonda District.”

As per the recitals of the complaint, the second respondent is the resident of Nakrekal Town.

8. As per the recitals of this petition, the second respondent has been residing in Nakrekal Town, Nalgonda District. It is not the case of the petitioner that the Judicial First Class Magistrate, Miryalaguda has no territorial jurisdiction over Nakrekal area. The various queries raised by the learned counsel for the petitioner involve complexity of disputed questions of fact which cannot be gone into while exercising the inherent jurisdiction under Section 482 Cr.P.C. If this Court expresses any opinion, the same may cause prejudice to one of the parties to the proceedings in view of pendency of C.C.No.561 of 2007. As observed earlier, the learned Magistrate has not committed any

illegality or irregularity while taking cognizance of the offence so as to interfere. The possibility of filing of this petition to protract the proceedings cannot be ruled out completely.

9. 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.”

10. 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.

11. 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.

12. Hence, the Criminal Petition is dismissed.

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

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T.SUNIL CHOWDARY, J

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Date: 01.03.2016

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

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