

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.7110 and 15937 of 2016

COMMON ORDER

These two petitions under Section 482 Cr.P.C., are filed to quash the proceedings in C.C.No.125 of 2016 on the file of III Special Magistrate Court, Erramanzil, Hyderabad, registered for the offence under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act'), against petitioners/A1 to A3.

2. Petitioners in CrI.P.No.7110 of 2016 are A1 and A2 and petitioner in CrI.P.No.15937 of 2016 is A3 in the aforesaid case. The second respondent filed a complaint under Section 200 Cr.P.C. before the VI Additional Chief Metropolitan Magistrate, City Criminal Courts, Hyderabad, alleging that there was a Memorandum of Understanding (MOU) between him and the petitioners for Rs.3,60,000/- and in view of discharge of the debt under MOU, a cheque bearing No.309729 dated 02.04.2015 was issued by the petitioners to him to be drawn on State Bank of India, Tekkali Branch, Srikakularm District, as advance payment for receipt of communication of approval of grant and further agreed to pay the balance amount of 15% out of the grant upon receipt of the grant. The said cheque was issued towards discharge of the payment due to the complainant as advance. The accused were also due an amount of 15% of the total amount of grant received by deducting the present cheque amount. Later, when the complainant presented the said cheque in Oriental Bank of Commerce, Mehdipatnam Branch, Hyderabad, for realization of the amount, the same was

returned by payee Bankers vide memo dated 08.06.2015, on the ground of insufficient funds. Thereafter, the complainant issued a notice dated 27.06.2015 demanding payment of the debt amount covered by the cheque and the accused gave a reply dated 17.07.2015, but failed to pay the debt covered by the cheque. Therefore, he filed complaint before the Court.

3. Learned counsel for petitioners raised three contentions. The first contention is that the MOU is subject to approval and it was ante-dated since the stamp affixed by the seller is dated 13.03.2015 and the document was executed on 12.03.2015 i.e., one day prior to purchase of the stamp. The second contention is that there was no legally enforceable debt and the MOU was not signed by A1 and A2, but signed by A3 alone, however, cheque was issued by A2 in his personal capacity and therefore, there is no material to proceed against the petitioners for the offence punishable under Section 138 of the Act.

4. It is settled law that the Court can exercise its jurisdiction under Section 482 Cr.P.C., sparingly in exceptional circumstances where the allegations made in the complaint on its entirety would not constitute any offence as held by the Apex Court in **State of Haryana v. Bhajanlal**¹ vide guideline No.1 or if the complaint is filed as abuse of process of the Court vide guideline No.6. But, the present complaint is filed under Section 138 of the Act, for dishonour of cheque and the petitioners seek quashment of the complaint on various grounds. In similar case reported in **Sampelly**

¹ 1992(1) SCC 335

Satyanarayana Rao v. Indian Renewable Energy Development Agency Limited², the Apex Court held at paragraph No.17 as under:

“As is clear from the above observations of this Court, it is well-settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact”.

If the same principle is applied to the present facts of the case, this Court cannot decide the disputed question of fact regarding the validity of MOU and liability of petitioners to decide whether there is any legally enforceable debt or not and ante-date of MOU etc., Therefore, keeping in view the judgment of the Apex Court, which is binding precedent on this Court, it is difficult for this Court to quash the proceedings on any of the grounds pointed out by learned counsel for petitioners. However, it is left open to the petitioners to raise all these contentions before the trial Court. Hence, I find no grounds to quash the proceedings against the petitioners.

5. In the result, both the Criminal Petitions are dismissed. However, it is left open to the petitioners to raise all the contentions before the trial Court during trial. Miscellaneous petitions, if any, pending in these criminal petitions shall stand dismissed.

M. SATYANARAYANA MURTHY, J

23rd November, 2016
sj

² AIR 2016 SC 4363