THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.15057 OF 2016

ORDER:

This petition is filed under Section 482 of Cr.P.C to quash the proceedings in C.C.No.349 of 2015 on the file of III Additional Judicial First Class Magistrate, Kakinada under Section 138 of Negotiable Instruments Act.

The petitioner/accused is the brother in law of the 2^{nd} respondent/complainant.

Due to the close acquaintance between the accused and the complainant, the complainant lent an amount of Rs.5,00,000/- to the accused for his purpose. The accused executed the promissory note on 03.08.2013 in favour of the complainant by agreeing to repay the same together with an interest of 24% either to the complainant or his order. The wife of the accused also signed the pronote as surety for the accused.

On making number of demands by the complaint, the accused issued two cheques bearing numbers 964720 & 964721 on 21.04.2015 for Rs.1,60,000/- and Rs.1,50,000/- drawn on State Bank of India, Himayat Nagar Branch, Hyderabad as part payment of the amount due under the above promissory note to the complainant. At the time of presentation of cheque, the accused assured the complainant that he is having sufficient funds in his account to honour the cheque.

On 22.04.2015, when the complainant presented the said cheques in Andhra Bank, Tilak Street, Kakinada, the said cheques were returned with an endorsement of 'insufficient funds' in the account of the accused.

On 02.07.2015, the complainant once again presented the cheques, but ultimately they were dishonoured and issued notice demanding payment of the amount covered by the cheques but the petitioner did not respondent to the notice dated 17.08.2015 and the notices were returned with endorsement of 'dishonoured cheques'. Thereupon, the complainant filed C.C.No.349 of 2015 against the accused under Section 138 of Negotiable Instruments Act.

As seen from the contention raised by the learned counsel for the petitioner that the defacto complainant committed theft of valuable documents including cheques, promissory notes, stamp papers and gave complaint to the police which is registered as F.I.R No.359 of 2015 for the offences punishable under Sections379, 420, 506 IPC r/w 34 IPC and 156(3) Cr.P.C. But, as on today, there was no progress in investigation in the above crime.

Learned counsel for the petitioner fairly conceded that the F.I.R is still pending with the police for investigation. Based on the allegations made in the complaint, it is difficult to decide the complexity of the petitioner or issue of cheques in discharge of legally enforceable debt at this stage while exercising jurisdiction under Section 482 of Cr.P.C. Whether the defacto complainant committed theft of the documents and presented them for collection is a matter of evidence and this Court cannot decide it while exercising jurisdiction under Section 482 of Cr.P.C regarding truth or otherwise in the allegations made in the complaint, as the jurisdiction of this Court is limited.

In **R.P. Kapur v. State of Punjab**[1], the Apex Court held as follows:

> "There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise."

In the present case, the allegation made in the complaint on its face value would constitute an offence and there is no legal bar to entertain a complaint by the Judicial Magistrate of First Class. The truth or otherwise in the complaint and defence i.e. regarding theft of cheques, promissory notes and other documents is a matter of evidence and the petitioner is entitled to elicit material regarding the defence set up by him in the cross-examination of witness before the Magistrate during trial and this court cannot quash the proceedings in C.C.No.349 of 2015 on the allegation of theft of documents,

[1] AIR 1960 SC 866

etcetera. It is not supported by any material *prima facie* that the 2nd respondent committed theft of those papers and documents.

Hence, I find no ground to quash the proceedings in C.C.No.349 of 2015 and that apart, the major part of the trial is completed in the case.

Hence, the criminal petition is dismissed at the stage of admission. No costs.

Consequently, miscellaneous petitions pending, if any, shall also stand dismissed

JUSTICE M. SATYANARAYANA MURTHY

Date:24.10.2016
SP