HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.13399 of 2010

ORDER:

This petition is filed under Section 482 Cr.P.C., to quash the proceedings against the petitioner in CC No.847 of 2010 on the file of the III Additional Chief Metropolitan Magistrate, Vijayawada.

2. Heard Sri VSR Anjaneyulu, learned counsel for the petitioner, Sri R. Venkat Rao, learned counsel representing Mrs.D.Sangeetha Reddy, learned counsel for the 1st respondent and the learned Public Prosecutor representing the State.

3. The 1st respondent herein filed a private complaint against the petitioner under Sections 190 and 200 of Cr.P.C. before the Chief Metropolitan Magistrate, Vijayawada, for the offence punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1981 (for short 'N.I. Act'). As per the allegations made in the complaint, the petitioner herein issued a cheque bearing No.774923 dated 21.12.2009 in favour of the 1st respondent, for a sum of Rs.18,00,000/- drawn on Vysya Bank Ltd., Governerpet Branch, Vijayawada. The 1st respondent presented the said cheque on 05.02.2010 through his banker State Bank of India, Governerpet Branch, Vijayawada, for collection. But the cheque was returned with endorsement 'account closed'. Then the 1st respondent got issued a legal notice on 09.03.2010 directing the petitioner to pay the amount within 15 days from the date of receipt of the notice. The said legal notice was returned with endorsement 'not claimed'.

4. Now the point for consideration is whether the trial court committed any error while taking cognizance of the offence against the petitioner for the offence under Section 138 of the N.I.Act?

5. A perusal of the record shows that the petitioner has followed

the procedure as contemplated under Section 138 of the N.I.Act before filing of the complaint against the petitioner. The trial court after satisfying itself with the material available before him, has taken cognizance for the offence under Section 138 of the N.I. Act against the petitioner. The predominant contention of the learned counsel for the petitioner is that the petitioner has closed the bank account, much prior to issuance of the cheque. To substantiate his contention, learned counsel for the petitioner has drawn my attention to the certificate purported to have been issued by the Sub Inspector of Police, Seetharampuram Sector. As per the said certificate, the petitioner has lost eight cheques pertaining to Ing Vysya Bank, Bank of Baroda and State Bank of India. A perusal of the record further reveals that on 16.10.2009, the petitioner herein addressed a letter to the Manager, Ing Vysya Bank, Governerpet, Vijayawada, not to honour the cheques in respect of his accounts bearing Nos.315010030864, 315010052175, 315011005317, 315010028396, 315044000618 and 315011005724. There is also an endorsement on the letter that the above accounts are closed.

6. The petitioner has to assign reasons for closing of the accounts. Whether the petitioner has lost cheque books pertaining to eight accounts or not, has to be decided during the course of trial only. The various queries raised by the petitioner involve complexity of disputed questions of fact, which cannot be gone into while exerting the inherent powers under Section 482 Cr.P.C. The allegations made in the complaint *prima-facie* constitute an offence alleged to have been committed by the petitioner/accused under Section 138 of the N.I. Act.

7. At this juncture, learned counsel for the petitioner has drawn to my attention the decision in '***NEPC MICON Ltd. Vs. MAGMA LEASING Ltd.***[1], wherein the Apex court in para 7 held as follows:

"Further, the offence will be complete only when the conditions in the proviso (a), (b) and (c) are complied with. Hence, the question is, in a case where cheque is returned by the bank unpaid on the ground that the account is closed, would it mean that cheque is returned as unpaid on the ground that the amount of money standing to the credit of that account is insufficient to honour the cheque. In our view, the answer would obviously be in the affirmative because cheque is dishonoured as the amount of money standing to the credit of that account was nil at the relevant time apart from it being closed. Closure of the account would be an eventuality after the entire amount in the account is withdrawn. It means that there was no amount in the credit of that account on the relevant date when the cheque was presented for honouring the same. The expression the amount of money standing to the credit of that account is insufficient to honour the cheque is a genus of which the expression that account being closed is specie. After issuing the cheque drawn on an account maintained, a person, if he closes that account apart from the fact that it may amount to another offence, it would certainly be an offence under Section 138 as there was insufficient or no fund to honour the cheque in that account; Further, cheque is to be drawn by a person for payment of any amount of money due to him on an account maintained by him with a banker and only on that account cheque should be drawn. This would be clear by reading the Section along with provisos (a), (b) & (c)."

8. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that it is not a fit case to quash the proceedings against the petitioner.

9. The criminal petition is, therefore, dismissed. Miscellaneous petitions, pending if any, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 23.02.2016
BSS

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

-

-

51

CRIMINAL PETITION No.13399 of 2010

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

Date: 23.02.2016

BSS

---

[1] (1999) 4 SCC 253