

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO. 16683 OF 2016

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C to quash the proceedings in CC No. 276 of 2016 pending on the file of Additional Judicial Magistrate of First Class, Ananthapur, filed under Section 138 of the Negotiable Instruments Act.

2. Respondent No. 2 filed a complaint under Section 138 of the Negotiable Instruments Act after complying with the necessary formalities under the Act. On receipt of summons from the Court, the petitioner filed the present petition on two grounds. The first ground is that the petitioner had no acquaintance with the second respondent and the second ground is that the petitioner lodged a complaint dated 14.5.2012 with the police alleging that he lost his cheque book, an amount of Rs. 2,000/- in cash and cell phone, while proceeding to Gugudu Village to worship lord Kullai Swamy, in RTC bus, therefore, the question of issuing cheque to 2nd respondent towards discharge of legally enforceable debt does not arise and prayed to quash the proceedings.

3. The first ground urged before this Court is that he had no acquaintance with the second respondent. While exercising jurisdiction under Section 482, this Court cannot decide whether the

petitioner had any acquaintance with the second respondent, since it is a question to be decided based on evidence. Similarly, the second ground is that he lost his cheque book, Rs. 2000/- cash and cell phone while proceeding to Gugudu Village to worship lord Kullai Swamy, in RTC bus, and lodging a complaint dated 14.5.2012, thereby cheque was never issued to the second respondent by the petitioner towards the discharge of legally enforceable debt. The loss of cheque book etc., is a disputed question of fact to be decided by the Court only after completion of trial. But at the threshold of trial or enquiry, this Court cannot come to any such conclusion that he lost the cheque book, cash of Rs. 2,000/- and a cell phone based on the alleged complaint dated 14.5.2012.

4. In **SAMAPALLE SATYANARAYANA RAO v. INDIAN RENEWABLE ENRGY OF DEVELOPMENT AGENCY LIMITED¹** the Apex Court held that when a cheque is issued as security for payment of loan due, it can be said to be issued in lieu of discharge of legally enforceable debt and the court has to look into the allegations made in the complaint, if it would constitute the offence punishable under Section 138 of Negotiable Instrument Act, 1881, the court cannot quash the proceedings and disputed questions of fact cannot be decided while exercising jurisdiction under Section 482 Cr.P.C.

5. The allegations made in the petition are disputed questions of fact cannot be gone into while exercising jurisdiction under Section

¹ AIR 2016 SC 4363

482 Cr.P.C. There is a statutory presumption under Section 139 of Negotiable Instruments Act, that the cheque was issued in favour of bearer of the cheque towards legally enforceable debt. The presumption is rebuttable and rebutting the presumption would arise only during trial. Till such presumption is rebutted, the cheque is presumed to be issued towards discharging of part or whole of the legally enforceable debt.

6. Therefore, in view of the principle laid down in the Judgment referred to above, it is difficult to quash the proceedings at this stage since the grounds urged before this Court pertains to a question of fact decided only after trial and not at this stage. Leaving it open to the petitioner to raise other contentions before the concerned Court, this Criminal Petition is liable to be dismissed.

7. In the result, the Criminal Petition is dismissed at the stage of admission. As a sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Date: 09.12.2016
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