THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTY

Crl.P.No.15282 of 2016

ORDER

This petition is filed under Section 482 Cr.P.C., to quash the proceedings in C.C.No.21 of 2013 on the file of Special Magistrate, Amalapuram, registered for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act'), against the petitioner, on the ground that there was no legally enforceable debt as the cheque was not issued to discharge any legally enforceable debt and it was issued as a security for the limited amount of Rs.50,000/- and it shall be presented for clearance, but shall not be presented in outstation and that during trial, the complainant did not produce any evidence before the Court to establish the legally enforceable debt, thereby the complaint is not maintainable and it is liable to be quashed.

2. The second respondent filed the complaint for the offence punishable under Section 138 of the Act alleging that the petitioner/accused borrowed an amount of Rs.3,00,000/- on 16.07.2007 for his family expenses agreeing to repay the same with interest at 24% per annum and he executed a demand promissory note in favour of the complainant on the even date. Subsequently on 10.08.2009, the accused issued a cheque bearing No.031440 drawn on Axis Bank Limited, Amalapuram branch, in favour of the complainant for Rs.3 lakhs towards part payment of debt due under the promissory note while agreeing to pay the balance amount within few days. The second respondent further stated that when he presented the said cheque before Andhra Bank, Konkapalli on

19.08.2009 for clearance, the same was returned with an endorsement as ‘funds insufficient’. Thereafter, the second respondent intimated about dishonour of cheque to the petitioner on 21.08.2009 and on 22.08.2009, he got issued a legal notice to the petitioner demanding to pay the amount covered by the dishonoured cheque and that though the said notice was served on 26.08.2009, the petitioner failed to pay the same within 15 days. Therefore, he filed the present complaint before the Court.

3. It is the specific contention of the learned counsel for petitioner that during trial, the second respondent did not produce the promissory note allegedly executed by the petitioner and therefore, the liability of petitioner need not be decided by the trial Court and straightaway the matter can be quashed. He relied upon the judgment of the Apex Court reported in **Kamlesh Kumar V. State of Bihar**[1], wherein it was held that as the trial has already commenced and witnesses have already been examined, at this stage, it would not be proper to interfere with the trial and decide the petition under Section 482 Cr.P.C., and that when the complaint itself is not maintainable, the Court cannot decide the dispute by exercising the jurisdiction under Section 482 Cr.P.C.

4. No doubt, there is no bar to entertain an application under Section 482 Cr.P.C. at any stage to quash the proceedings and mere commencement of trial is not a ground to decide the maintainability of petition under Section 482 Cr.P.C. But, here, the contention of petitioner is that the second respondent did not file the promissory note allegedly executed by him in his favour so as to

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[1] (2014) 2 SCC 424

establish the existence of legally enforceable debt, but produced the deposition recorded by the trial Court, wherein the petitioner exhibited only four documents, they are, original cheque, returned memo, office copy of the registered notice and acknowledgment. They were marked as Exs.P1 to P4. In cross-examination of P.W.1, it was elicited that the second respondent did not file any suit basing on the promissory note or basing on the cheque issued to him and that the witness denied the suggestion that the petitioner did not borrow any amount on 16.07.2007 and did not execute any promissory note in his favour and as such, he did not file the original promissory note and the complaint does not disclose the specific amount that the accused has to pay towards interest, but the suggestion was denied. Similarly, the two other witnesses were examined as P.Ws.2 and 3 to prove the transaction of borrowing.

5. The requirement under Section 138 of the Act is the only issuance of cheque and its dishonour subject to compliance of all other provisions towards discharge of legally enforceable debt. Merely because the promissory note is not produced, while exercising jurisdiction under Section 482 Cr.P.C., this Court cannot directly come to a conclusion that there is no subsistence of legally enforceable debt payable by petitioner as on the date of filing the complaint. The second respondent can prove the legally enforceable debt in any other mode and it is for the trial Court to appreciate the evidence on record and decide the matter on merits, but by exercising the jurisdiction under Section 482 Cr.P.C., this court cannot quash the proceedings.

6. Yet, learned counsel for the petitioner contended that mere vague allegations in the complaint regarding subsistence of legally enforceable debt is not sufficient and the second respondent has to establish the subsistence of legally enforceable debt, but such question has to be enquired into by the trial Court and not by this Court while exercising jurisdiction under Section 482 Cr.P.C. The jurisdiction of this Court under Section 482 Cr.P.C. is limited and such jurisdiction has to be exercised only in exceptional circumstances where the circumstances show that the complainant filed complaint by abuse of process of any Court or secure ends of justice or to implement the effect of any order under the Code of Criminal Procedure Code. In **R.P.Kapur v. State of Punjab**[2], wherein the Apex Court held as under:

> "The inherent 'Jurisdiction of the High Court could be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. The following are some categories of cases where the inherent jurisdiction could and should be exercised to quash proceedings:
> (i) where there was a legal bar against the institution or continuance of the proceedings;
> (ii) where the allegations in the first information report or complaint did not make out the offence alleged; and
> (iii)where either there was no legal evidence adduced in support of the charge or the evidence adduced clearly or manifestly failed to prove the charge.

7. Thus, this Court can exercise the jurisdiction under Section 482 Cr.P.C. only where the allegations on the face value of it would not constitute an offence, then the Court can interfere with the trial of the case and quash the proceedings. In the present case, the

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[2] AIR 1960 SC 866

existence of legally enforceable debt is a matter of evidence and such disputed question of fact cannot be decided while exercising jurisdiction under Section 482 Cr.P.C., Hence, I find no ground to quash the proceedings in C.C.No.21 of 2013 on the file of Special Magistrate, Amalapuram.

8. Accordingly, the Criminal Petition is dismissed. The observations made in this order will have no bearing on the decision to be pronounced by the trial Court. The trial Court is directed to decide the matter uninfluenced by the observations made herein.

Miscellaneous petitions, if any, pending in this criminal petition shall stand dismissed.

M. SATYANARAYANA MURTY, J

27th October, 2016

sj