

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16222 OF 2016

ORDER:

This Criminal Petition, under Section 482 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed to quash the proceedings in CC No.326 of 2016 registered against the petitioner for the offence punishable under Section 138 of Negotiable Instrument Act, 1881, pending on the file of Judicial Magistrate of First Class, Kurnool.

The only allegation made in the petition is that the petitioner never purchased maize and indebted to the complainant and issued cheque bearing No.765784 as security purpose for payment of amount due in various business transactions. It is also contended that the learned Magistrate issued NBW when summons were returned with the endorsement "left without intimation returned to sender".

During hearing, learned counsel for the petitioner reiterated the same grounds.

The first ground is that he never indebted to the complainant in connection with the purchase of maize and he never issued a cheque. In **SANAPALLE SATYANARAYANA RAO v. INDIAN RENEWABLE ENRGY OF DEVELOPMENT AGENCY LIMITED**¹ 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

¹ AIR 2016 SC 4363

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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.

The allegations made in the petition are disputed questions of fact cannot be gone into while exercising jurisdiction under Section 482 Cr.P.C. Therefore, in view of the principle laid down in the Judgment referred to above, it is difficult to quash the proceedings at this stage.

The other contention raised by the counsel for petitioner is that when summons were returned with postal endorsement 'left without intimation returned to sender' in such case court cannot issue NBW, the court has to take necessary steps to secure the presence of the accused. Therefore issuance of NBW is not a ground to quash the proceedings. Hence, I find no ground to quash the proceedings exercising jurisdiction under Section 482 Cr.P.C. at this stage. However, the counsel for the petitioner can file an appropriate application under Section 70(2) Cr.P.C. to recall warrant, if advised.

Accordingly, the criminal petition is dismissed at the stage of admission.

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

M. SATYANARAYANA MURTHY, J

Date: 23.11.2016

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