

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.3489 of 2010

ORDER:

This petition is filed under Section 482 Cr.P.C., to quash the proceedings against the petitioner/accused in C.C. No.250 of 2008 on the file of the Special Judicial First Class Magistrate Court (Prohibition & Excise), Kurnool.

2. The contention of the learned counsel for the petitioner is two fold: (1) the petitioner has nothing to do with Sri Sambhavi Chemicals; hence the complaint is not maintainable; and (2) the allegations made in the complaint do not constitute the offence much less the offence under Section 138 of the Negotiable Instruments Act (the NI Act). ***Per contra***, learned counsel for the second respondent submitted that the allegations made in the complaint *prima facie* constitute the offence punishable under Section 138 of the NI Act. He further submitted that there are no grounds much less valid grounds to quash the proceedings against the petitioner.

3. As per the allegations made in the complaint, the petitioner along with others issued five (5) cheques:

1. Cheque bearing No.010084 dated 01.4.2007 for a sum of Rs.39,240/- drawn on Indus Ind Bank, Kurnool
2. Cheque bearing No.010085 dated 01.5.2007 for a sum of Rs.39,240/- drawn on Indus Ind Bank, Kurnool
3. Cheque bearing No.010086 dated 01.6.2007 for a sum of Rs.39,240/- drawn on Indus Ind Bank, Kurnool
4. Cheque bearing No.010087 dated 01.7.2007 for a sum of Rs.39,240/- drawn on Indus Ind Bank, Kurnool
5. Cheque bearing No.010088 dated 01.8.2007 for a sum of Rs.39,240/- drawn on Indus Ind Bank, Kurnool

-

in favour of the second respondent in discharge of the debt. The second respondent presented the cheques in Union Bank of India Kurnool on 10.9.2007 for collection and the same were returned with endorsement "*funds insufficient*". The second respondent got issued

legal notice dated 27.9.2007 directing the petitioner to pay the amount covered by the cheques within fifteen (15) days failing which legal consequences will follow. For one reason or the other, the petitioner did not choose to pay the amount. Having no other alternative, the second respondent filed the complaint under Section 200 Cr.PC., on the file of the Court of Additional Judicial Magistrate of First Class, Kurnool. The learned Magistrate, after satisfying with the material placed before him, has taken cognizance for the offence under Section 138 of the NI act, numbered the complaint as C.C. No.373 of 2008 and issued summons to the petitioner. Subsequently, the case was transferred to the Special Judicial First Class Magistrate Court (Prohibition & Excise), Kurnool and renumbered as C.C.No.250 of 2008.

4. A perusal of the record clearly established that the second respondent has followed the procedure as contemplated under Section 138 of the NI Act before filing of the complaint. The record further reveals that the petitioner is one of the Managing Partners of Sri Sambhavi Chemicals, Kurnool (the firm). The predominant contention of learned counsel for the petitioner is that the petitioner has nothing to do with the affairs of the firm. If really the petitioner has nothing to do with the affairs of the firm, what made him to issue the cheques in question in favour of the second respondent in the capacity of Managing Partner of the firm. For the reasons best known to him, the petitioner did not choose to issue befitting reply to the legal notice dated 27.9.2007 issued by the second respondent. Whether the cheques in question are legally enforceable or not has to be decided after fullfledged trial. Various contentions raised by the learned counsel for the petitioner involves complexity of disputed questions of fact, which cannot be gone into while exercising the power under Section 482 Cr.PC.

5. I have carefully perused the allegations made in the complaint in order to ascertain whether the allegations made in the complaint are patently absurd and inherently improbable thereby to quash the proceedings. The material available on record is *prima facie* sufficient to proceed further against the petitioner.

6. In **Amit Kapoor v Ramesh Chander**^[1], the Hon'ble Apex Court held as follows:

27.2 The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith *prima facie* establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the court may interfere.

27.3 The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4 Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

7. 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 this is not a fit case to quash the criminal proceedings at this stage.

8. Accordingly, the criminal petition is dismissed. Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

T.SUNIL CHOWDARY, J

June 17, 2016.

YS

[\[1\]](#) (2012) 9 SCC 460