

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15355 OF 2016

ORDER:

This criminal petition, under Section 482 of Criminal Procedure Code, 1973 (for short, 'Cr.P.C'), is filed by the petitioner to quash the proceedings in CC No.266 of 2015 pending before the V Special Magistrate, Erramanzil, Hyderabad.

It is the case of the de-facto complainant, who is the second respondent herein, is that on 19.12.2011 the petitioners issued a cheque bearing No.631583 for Rs.52,500/- towards part payment, when it was presented by the complainant, it was returned with an endorsement 'payment stopped by drawer' and again the petitioners issued a cheque bearing No.513727 without the signature of A.3, thereby cheque was returned with an endorsement 'singly signed'. The second petitioner and A.3 issued cheque bearing No.631583 for Rs.52,500/- drawn on SBH, Chikadapply branch for Rs.52,500/- on behalf of first petitioner, to discharge legally enforceable debt, but the second respondent could not realize the amount covered by the said cheque, and thereafter after following necessary procedure contemplated under the provisions of Negotiable Instrument Act, filed the present complaint.

The contention of the counsel for the petitioners before this Court is that the petitioners did not issue any cheque to the complainant and that the signature on the face of record appears to be forged. But the date of issue of cheque and genuineness of signature on the cheque cannot be decided in a

proceeding under Section 482 Cr.P.C. Therefore, on this ground the complaint cannot be quashed.

The other contention is that no statutory notice was served on the petitioners, since he is in Germany. But the postal acknowledgment dated 23.01.2012 referred in the complaint shows that notice was served, but copies of the document was not filed before this Court. On perusal of such notice, this contention cannot be upheld while deciding the petition under section 482 Cr.P.C.

The counsel for the petitioner further contended that there are civil disputes regarding lease and on account of such dispute the present complaint is filed. But, at this stage, this Court cannot look into since a cheque is an independent transaction.

The main ground raised by the petitioners is that the complaint under Section 138 Negotiable Instrument Act, 1881 is filed only to abuse of process of the court, no doubt, inherent power under Section 482 Cr.P.C. can be exercised by this court in extraordinary circumstances sparingly to give effect to any order under the code of criminal procedure, to prevent abuse of process of court. In **R.P. KAPUR V. STATE OF PUNJAB**¹ the Apex Court laid down four guidelines to be followed by the court while exercising inherent power under Section 482 Cr.P.C. In **STATE OF KARNATAKA VS. L.MUNISWAMY & ORS**², the Apex Court held that in the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an

¹ AIR 1960 SC 866

² AIR 1977 SC 1489

abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.

Earlier, in **STATE OF HARYANA VS. BHAJAN LAL**³ the Apex Court laid down certain guidelines to exercise power under Section 482 Cr.P.C.

In view of the guidelines laid down by the Apex Court in various judgments referred to supra, I find no legal infirmity to quash the proceedings in the CC at this stage and since it is based on the cheque issued by the petitioners in favour of the second respondent, to discharge the legally enforceable liability after compliance of necessary formalities on the face of record.

³ 1992 Supp.(1) SCC 335

- 4 -

One of the contention raised before this court is that it is purely civil dispute. But in **INDIAN OIL CORP. VS. NEPC INDIA LTD. AND OTHERS⁴** a similar contention was urged before the Apex Court, wherein the Apex Court observed that the criminal litigation cannot be converted into civil litigation, however, when there is a criminal allegation, this court cannot exercise jurisdiction under Section 482 Cr.P.C. to quash the proceedings before it. Therefore, by following the principles laid down in the above judgment, it is difficult for me to appreciate the facts at this stage regarding civil dispute and to quash the criminal proceedings in the C.C.

On over all consideration of entire material available on record, I find no illegality in the proceedings, to quash the same by exercising inherent jurisdiction of this court under Section 482 Cr.P.C. at this stage. The observations if any made hereinabove will have no bearing on the disposal of the main case pending before the learned Magistrate. The learned Magistrate is directed to decide the matter independently and uninfluenced with the observation made herein above.

With the above direction, the criminal petition is dismissed.

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

M. SATYANARAYANA MURTHY, J

Date: 28.10.2016
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⁴ 2006(6) SCC 736