

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Cr1.P.No.16167 of 2016

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') to quash the proceedings in C.C.No.798 of 2015 pending on the file of Judicial Magistrate of First Class, Nandyal, Kurnool District, registered for the offences punishable under Sections 138 and 142 of Negotiable Instrument Act(for short 'NI Act').

2. Petitioner Nos. 1 to 3/Accused No.3 to 5 are the accused in C.C.No.798 of 2015. Respondent No.1/ *de facto* complainant filed a complaint against the petitioners and other accused, based on a cheque dishonoured on its presentation after completion of necessary formalities as required under N.I.Act. The specific allegation is made in Para No.2 of the complaint that the petitioners/A.3 to A.5 along with A.2 were in need of money approached her and borrowed Rs.10 lakhs in cash on 5.09.2013 and executed a demand promissory note in her favour agreeing to repay the same with interest at 24% p.a. payable either to the complainant or her order on demand. In para No.3 of the complaint, it is averred that the petitioners have promised to pay the amount and issued a cheque bearing No.077052 dt. 20.05.2015 for an amount of Rs.7,00,000/- as they are actively participating in day to day affairs of the institution of A.2 and therefore, they are also liable for the offence allegedly committed under Section 138 of NI Act.

3. Sri Karri Murali Krishna, learned counsel for petitioners, argued that the petitioners are working in different places; whereas the respondent No.1 situated at Nandyal and hence, they cannot be made liable for the offence allegedly committed by the petitioners. Mere making an allegation that they are looking after day to day affairs of the institution of A.2 is not sufficient to proceed against them and therefore, he requested to quash the proceedings in C.C.No.798 of 2015 registered for the offence under Section 138 of NI Act. He has drawn the attention of this Court to the cheque issued and dishonoured on its presentation and it is a cheque issued by Keshava Reddy 'E' learning School for Rs.7,00,000/- and the same was returned with a memo dt. 08.07.2015 by the payee bank with an endorsement 'Funds Insufficient' and thereafter she issued a Notice dt. 18.07.2015 against all the accused including petitioners herein specifically alleging that they borrowed the amount and executed promissory note in her favour and that cheque was issued a cheque in lieu of the discharge of the part of legally enforceable debt, demanding to pay the amount covered by the dishonoured cheque, but the contention of the petitioners is that Notice were not served on the petitioners and they were returned with an endorsement 'left without instructions'. Thus, the petitioners challenged the proceedings on two grounds; (1) one is that they are not responsible for any debt due and the second is that no notices were served on them as required under Section 138(2) of NI Act.

4. The first and foremost contention of the learned counsel for petitioners is that they are not responsible for the debt due and

mere allegation in the complaint that they are dealing with day to day affairs of accused No.1 is not sufficient to proceed against them. This is a disputed question of fact and this Court can exercise its jurisdiction under Section 482 Cr.P.C. only where the allegations made in the complaint or FIR, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the accused. In view of the Guide Line No.1 in ***State of Haryana v. Bhajanlal and others***¹. The jurisdiction of this Court is limited and this Court cannot look into the material available on record meticulously to find out whether the case would end in acquittal or conviction. ***Mrs. Dhanalakshmi v. R. Prasanna Kumar and others***², ***Ganesh Narayen Hedge v. S.B.Bangarappa***³ and in a recent judgment reported in ***Sampelly Satyanarayana Rao v Indian Renewable Energy Development Agency Limited***⁴, the Apex Court held that while dealing with a quash petition, the Court has ordinarily to proceed on the basis of averments in the complaint and the defence of the accused cannot be considered at this stage. In a complaint filed under Section 138 of NI Act when the Court deciding an application under Section 482 Cr.P.C, the Court can ordinarily go into the contents of the complaint, but not the defence of the accused, the conviction Court go into disputed facts while exercising jurisdiction u/s 482 Cr.P.C.

¹ 1992 Supp(1) SCc 335,

² AIR 1990 SC 494

³ AIR 1995 4 SCC 41

⁴ AIR 2016 SC 4363

5. By applying the principle in the above judgment, it is difficult for me to accept the contention of the petitioners that whether petitioners are really looking after day to day affairs of the accused No.2 or not at this stage since it is a disputed question of fact. Therefore, on this ground, this Court cannot quash the proceedings.

6. The second ground urged before this Court is that no notices were served, as required under Section 138 (b) of NI Act and it is filed without substantial compliance of Section 138(b) of NI Act is nothing but abuse of process of Court and prayed to quash the proceedings.

7. It is undisputed fact that the complainant in compliance of requirement under Section 138(b) of NI Act, sent notices to all the accused including the petitioners herein by registered post, but they were returned with an endorsement that 'left without instructions'. The petitioners did not dispute the correctness of the addresses to which the notices were sent and when such notices were sent to the correct address of the petitioners, the Court shall draw a presumption under Section 27 of General Clause Act that the notices were deemed to be served to the petitioners and the said presumption is rebuttable. However, at this stage, it is difficult to accept this contention and quash the proceedings, the petition is liable to be dismissed leaving it open to the petitioners to raise all these questions during trial.

8. In view of my foregoing discussion, I find no merits in this petition.

9. Accordingly, this Criminal Petition is dismissed at the stage of admission itself.

Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

November 22, 2016.
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THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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