

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.9307 of 2016

ORDER

This petition under Section 482 Cr.P.C., is filed by the petitioner/accused to quash the proceedings in C.C.No.367 of 2016 on the file of I Additional Judicial Magistrate of First Class, Kadapa, registered for the offences under Sections 138 and 142 of Negotiable Instruments Act, 1881 (for short 'the Act'), on the ground that he borrowed a sum of Rs.5 lakhs from the complainant on 18.12.2009 by mortgaging his house property and as per the terms and conditions of the mortgage deed, he agreed to pay the amount due on or before 17.12.2012 along with interest. Accordingly, petitioner paid a sum of Rs.90,000/- to the complainant on 11.12.2012 as part payment and monthly interest regularly. Therefore, there was revised agreement between the parties on 11.12.2012 for Rs.4,10,000/- by deducting Rs.90,000/- and as per the revised agreement, the complainant assured to return the original documents to petitioner after payment of the said amount. Thereafter, the petitioner paid a sum of Rs.50,000/- with interest to the complainant on 07.03.2013. Subsequently, the complainant without the knowledge of petitioner kept the original documents in Central Bank of India, Kadapa, and obtained loan of Rs.12 lakhs from the Bank. Thereupon, the petitioner filed W.P.No.41064 of 2015 before this Court and obtained appropriate direction. He also lodged a complaint with SHO-II Town Police Station, Kadapa, against the complainant and the same was registered under Section

420 IPC. Thus, there were civil and criminal litigations between the parties with regard to mortgage transaction.

2. The specific grounds urged by petitioner in this petition are;
- (a) that the complaint does not disclose the offence allegedly committed by petitioner;
 - (b) that the complaint was filed developing grudge against the petitioner on flimsy grounds;
 - (c) that the initiation of proceedings against the petitioner is an abuse of process of law and to secure the ends of justice, the proceedings are liable to be quashed; and
 - (d) that the complainant without knowledge of petitioner deposited the documents worth more than Rs.70 lakhs in the Central Bank of India and obtained loan of Rs.12 lakhs, thereby cheated the petitioner and therefore, the Court can quash the proceedings.

3. The first and foremost contention raised by petitioner before this Court is that the allegations made in the complaint on its entirety would not constitute the offences alleged. Undoubtedly, as per guideline No.1 in **State of Haryana v. Bhajanlal**¹ the Apex Court held that the Court can exercise jurisdiction under Section 482 Cr.P.C. if the allegations made in the complaint or First Information Report on its face value would not constitute any offence and quash the proceedings. In the present case, the averments in the complaint would disclose that the petitioner borrowed a sum of Rs.1,00,000/- from the complainant agreeing to repay the same with interest at

¹ 1992(1) SCC 335

24% per annum, and on demand, the petitioner issued a cheque bearing No.756697 dated 19.01.2016 to draw on Indus Ind Bank, Kadapa. When the complainant presented the said cheque, the same was returned with endorsement 'account closed'. Thereafter, the complainant got issued a legal notice dated 11.02.2016 demanding the accused for payment of cheque amount, but the accused failed to pay the said amount. Therefore, it is sufficient to give rise to cause of action for filing the complaint. Thus, the allegations made in the complaint on its face value would constitute the offences allegedly committed by the petitioner.

4. The other ground raised by petitioner is that the complainant bore grudge against the petitioner and filed the complaint on flimsy grounds, but the same is not supported by any material and even otherwise, it cannot be a ground to quash the proceedings in view of the seven guidelines laid down by the Apex Court in **Bhajanlal** (1 supra).

5. The other contention raised before this Court is that the complaint is filed as abuse of process of law. But the petitioner is unable to substantiate this contention as to how it is abuse of process of law, except filing set of documents along with memo in USR No.6297 of 2016 dated 22.09.2016 i.e., photostat copies of agreement, promissory note and plaint copy in O.S.No.5221 of 2016 pending on the file of III Additional Junior Civil Judge, Kadapa, filed for recovery of Rs.2,38,493/- and cheques and legal notice. But, there is no reference about these documents in the grounds raised

in the petition. At best, those documents may be relevant for deciding the legal liability. The validity and genuineness of those documents cannot be decided by this Court in this petition filed under Section 482 Cr.P.C., since the Court is required to go into the allegations made in the complaint and find out whether those allegations on its face value would constitute the offences punishable under Sections 138 and 142 of the Act. In similar circumstances, the Apex Court in **Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Limited**², while dealing with the issuance of cheque as security for the loan held at paragraph No.17 as under:

“As is clear from the above observations of this Court, it is well-settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact”.

Therefore, this Court, at best, can go into the allegations made in the complaint. If the Court finds that those allegations on its face value would constitute any offence, the Court cannot quash the proceedings while exercising jurisdiction under Section 482 Cr.P.C. Therefore, by applying the principle laid down in the aforesaid judgment, I am of the considered view that it is not a fit case to quash the proceedings at this stage.

6. In the result, the Criminal Petition is dismissed. However, it is left open to the petitioner to raise all contentions before the trial

² AIR 2016 SC 4363

Court during trial. The trial Court is directed to decide the matter on merits in accordance with law uninfluenced by the observations, if any, made herein. Miscellaneous petitions, if any, pending in these criminal petitions shall stand dismissed.

23rd November, 2016
sj

M. SATYANARAYANA MURTHY, J

