

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16138 of 2016

ORDER:

This Criminal Petition under Section 482 of Code of Criminal Procedure (for short 'Cr.P.C') is filed to quash the proceedings in STC No.59 of 2016 (Old STC Nos.450 of 2015) on the file of Special Mobile, Judicial Magistrate of First Class, Chittor, registered for the offence under Section 138 and 142 of Negotiable Instrument Act.

The respondent/complainant filed Complaint under Section 138 and 142 of NI Act alleging that on 18.02.2014 the petitioner borrowed Rs.2,00,000/- as hand loan, agreeing to repay the same with 24% p.a. Again, on the same day, the petitioner borrowed Rs.3,50,000/- as another hand loan, agreeing to repay the same with interest at 24% p.a. In lieu of the discharge of the debt, the petitioner allegedly issued a cheque bearing No.001338 on 5.09.2015 for Rs.3,68,000/- drawn on ICICI Bank and as it was dishonored, the complainant issued Legal Notice on 3.10.2015 to the petitioner and as the petitioner did not respond, he filed the present complaint.

The present petition is filed on two grounds; one is that the question of issuing cheque for more than the amount does not arise and in support of his contention, he placed reliance on a judgment in **Angu Parameswari Texttiles (P) Limited; Rajam and**

Co. v. Rajam and Company; Angu Parameswari Textiles (P) Limited¹.

He also further contended that the petitioner lost his cheque and lodged a complaint and obtained an endorsement dt. 10.07.2015 from the Sub Inspector of Police, Yadamari Police Station, Chittor District. Finally, he issued an email message to the bank authorities not to pay the amount covered by the cheque.

During hearing, Sri P. Ramachandran, learned counsel for petitioner, reiterated the above contentions and requested this Court to quash the proceedings since continuation of proceedings in Criminal Court would amounts to abuse of process of the Court.

As seen from the allegations made in the complaint, the petitioner borrowed Rs.3,50,000/- on 18.02.2014 as hand loan agreeing to repay the same with interest at 24% p.a.. The total amount due as calculated by the learned counsel for the petitioner, approximately, comes to Rs.3,74,000/-; whereas the cheque was issued for Rs.3,68,000/- on 5.09.2015. Therefore, the amount due by the date of issuance of cheque towards hand loan with interest is not more than cheque amount and consequently, the principle laid down by the Madras High Court in **Angu Parameswari's** case has no application. Hence, on this grounds, the complainant cannot be quashed.

The other ground is that the petitioner lost his cheque and lodged a complaint and obtained an endorsement from the police on 10.07.2015. Therefore, the contention raised by the learned

¹ 2001 LS (Mad) 66

counsel for petitioner has to be decided after full fledged trial, but not in a petition filed under Section 482 Cr.P.C.

The other ground urged before this Court is that the petitioner sent an email to the bank authorities not to honour the cheque. This is a ground to attract the offence punishable under Section 138-A NI Act, if the respondent is able to prove the legally enforceable debt by the petitioner either in part or full payment and its dishonour, subject to compliance of other provisions of NI Act. Therefore, on these grounds, the proceedings cannot be quashed.

On overall consideration of entire material on record, I find that it is not a fit case to quash the proceedings at this stage.

Accordingly, this Criminal Petition is dismissed at the stage of admission. However, the observations made in the earlier paras, will have no bearing on the main STC and the learned Special Mobile, Judicial Magistrate of First Class, Chittor, is directed to decide the dispute independently uninfluenced by the observations made by this Court.

Consequently, the miscellaneous petitions, if any, pending, in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 21.11.2016
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Dt. 21.11.2016

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