

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16491 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.537 of 2016 on the file of V Additional Chief Metropolitan Magistrate, Vijayawada, Krishna District, registered for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act').

2. The second respondent, Kunapareddy Sujatha, filed private complaint before the learned V Additional Chief Metropolitan Magistrate, Vijayawada, alleging that the petitioner/accused borrowed huge amounts on several occasions from her and her employees by way of transfer from their accounts to her account and in total, the petitioner borrowed a sum of Rs.1,19,00,000/-, for which, she acknowledged the said debt on 23.11.2015 at Vijayawada. On demand, the petitioner issued a cheque bearing No.035930 for Rs.1,15,00,000/- on 30.01.2016 drawn on Axis Bank, Lakshmipuram, Guntur, through A/c.No.91502000178462 to the complainant. Later, when the complainant presented the cheque for collection, it was dishonoured. Though she got issued a legal notice, petitioner did not pay the amount covered by the cheque. Hence, she filed the present complaint.

3. The main ground urged by petitioner is that as per the allegations in the present complaint, the second respondent did not pay the amount directly to her and it was transferred from her account and also from the accounts of her employees, whereas in

the complaint filed by the second respondent before the police based on the same cheque, she stated that she gave an amount of Rs.1,19,00,000/- to one K. Sesha Rao and his wife Prasanna Lakshmi, petitioner herein, through her account and her agent Srinivasa Rao for the purpose of purchase of lands for her business. Therefore, on demand, she issued a cheque and on presentation of the same, it was dishonoured.

4. During hearing, learned counsel for petitioner, Ms.Madhavi Priya Mantena, while reiterating the said contentions, has drawn the attention of this Court to various allegations in the present complaints.

5. The basis for the present complaint is dishonor of cheque on its presentation by the payee Bank and thereafter, the second respondent issued a notice dated 15.02.2016 demanding payment of the amount covered by the cheque to petitioner, who in turn gave a reply notice dated 29.02.2016 with false allegations. In the earlier complaint filed before the police, the second respondent alleged that she paid amount for securing the lands for her business. Therefore, there is any amount of discrepancy with regard to the allegation in the earlier complaint and in the present complaint. However, the undisputed fact is issuance of cheque by petitioner, whether it was issued for repayment of amount paid by second respondent or for securing suitable site for business purpose or towards any other legally enforceable liability. Therefore, presumption under Section 139 of the Act can be drawn that the cheque was issued towards discharge of legally enforceable debt till it is rebutted during trial by

adducing evidence, either by eliciting in the cross-examination of witness examined on behalf of the complainant or by adducing independent evidence to rebut such presumption. As on today, if the facts in the earlier complaint or the facts in the present complaint are taken to be true, the cheque was issued towards discharge of part of the legally enforceable debt and it is the duty of petitioner to prove as to whether she received an amount of Rs.1,19,00,000/- for securing suitable site or towards discharge of loan amount. Therefore, the alleged discrepancy in the earlier complaint and in the present complaint is not a sufficient ground to quash the proceedings by exercising jurisdiction under Section 482 Cr.P.C.

6. The inherent jurisdiction of this Court under Section 482 Cr.P.C., can be exercised sparingly in exceptional circumstances. This Court can exercise its jurisdiction only to give effect to the orders passed under the Code of Criminal Procedure to prevent the abuse of process of law or to meet the ends of justice. In view guideline No.1 laid down by the Apex Court in **State of Haryana v. Bhajanlal**¹, this Court cannot decide the factual aspects before trial whether petitioner be acquitted or convicted, while exercising jurisdiction under Section 482 Cr.P.C. In the present case, the allegations made in the complaint would constitute the offence under Section 138 of the Act on its face value. Of course, there is discrepancy in the earlier complaint filed before the police for the offence under Section 420 IPC and the present complaint filed under Section 138 of the Act by the second respondent on the basis of the

¹ 1992(1) SCC 335

same cheque. But, at this stage, it is difficult to decide which allegation is true and quash the proceedings. Therefore, I find no ground to quash the proceedings at this stage. However, it is left open to petitioner to raise all these contentions during trial before the trial Court.

7. Granting liberty to petitioner as mentioned above, the Criminal Petition is dismissed. However, the trial Court is directed to decide the matter on merits uninfluenced by the observations made herein by this Court. Miscellaneous petitions, if any, pending in this criminal petition shall stand dismissed.

2nd December, 2016

sj

M. SATYANARAYANA MURTHY, J

