THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16917 OF 2016

O R D E R:

This criminal petition, under Section 482 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed to quash the proceedings in C.C.No.910 of 2015 filed under Section 200 of Cr.P.C for the offences punishable under Section 138 of Negotiable Instrument Act pending on the file of XIV Additional Chief Metropolitan Magistrate, Cyberabad.

2. The petitioner challenged the proceedings on three grounds.

The 1st ground is that petitioner discharged the entire debt and mentioned the details in para 2 of the petition from Sl.No.1 to 30 totaling to Rs.11,42,000/-, therefore, there is no legally enforceable debt. The 2nd ground is that the respondent herein lodged a complaint taking advantage of the blank signed cheques and promissory notes which are retained with him even after discharge. The 3rd ground is that there is a reference about payment of certain amount in the complaint but did not disclose the amount actually paid by the petitioner anywhere in the complaint. Therefore, it can be said to be a time barred debt and prayed to quash the proceedings.

3. Learned counsel for the petitioner during hearing contended that the petitioner already discharged the debt and a notice was issued on 08.06.2015 through his counsel Sri G. Venugopal Reddy informing him about payment of entire debt of Rs.11,42,000/- and Rs.3,42,000/- on various dates and requested to return the blank signed cheques and promissory notes and a Maruti car bearing No.AP 9 BQ 1256 within five days but no reply was

issued. However, the notice was returned with an endorsement "refused". But the complainant got issued a notice on 03.08.2015 informing about the dishonour of the cheques presented for collection in ICICI Bank, SD Road on the ground of payment stopped by drawer and demanded the petitioner to pay debt covered by the dishonored cheque without mentioning the amount paid to the respondent/complainant. He further drawn attention of this Court to certain averments in the complaint about the amount paid by the petitioner, but no details are mentioned in the complaint, thereby the debt is admitted to have been barred by limitation. Consequently, there is no legally enforceable debt, and the complaint is liable to be quashed. He also got issued a reply.

4. The respondent No.2 lodged a complaint Section 200 of Cr.P.C r/w Section 138 of Negotiable Instrument Act pending on the file of XIV Additional Chief Metropolitan Magistrate, alleging that petitioner issued cheques towards discharge of legally enforceable debt. On presentation of the cheques, the same were returned with an endorsement "Payment Stopped by Drawer" vide memo dated 12.06.2015. Later on 06.07.2015, the respondent got issued a legal notice demanding the petitioner to pay amount covered by cheque. On receipt of the same, the petitioner got issued a reply on 22.08.2015. Thereafter, the 2nd respondent filed a complaint before the Court.

5. The contention of the petitioner before this Court is three fold, the 1st is discharge of debt due to the 2nd respondent mentioned various details in the notice as well as the present petition. The said plea of discharge is suffice to conclude when the petitioner borrowed

some amounts from the respondent No.2. and discharge of the debt is question of disputed fact that cannot be decided by this Court by deciding the petition under Section 482 Cr.P.C. Since the duty of the Court is to verify the allegations made in the complaint and find out whether there exists any ground to proceed further against the petitioner or not, and for the said limited purpose, this Court can verify the material against the complaint but not the findings. Therefore, on the ground of discharge of debt, the proceedings in CC.No.910 of 2015 cannot be quashed.

6. The 2nd ground is that the petitioner allegedly issued blank signed cheques and promissory notes and utilizing the said cheques and promissory notes, the present complaint was filed. When the petitioner admitted issuance of blank signed cheques and promissory notes, it would fall within Section 20 of NI Act and it is nothing but giving authorization to holder of the cheque to file the petition. Therefore, after the petitioner himself authorizing the holder of the cheque by issuing signed blank cheques and promissory notes, petitioner cannot now contend that those cheques were forcibly obtained. However, whether the blank cheques and promissory notes were issued or not is a disputed question of fact which can be decided only after recording evidence. Only on this ground, the proceedings cannot be quashed at this Stage.

7. The 3rd ground alleged by the petitioner before this Court is that petitioner paid certain amounts. There is an averment in the complaint that accused issued cheques totaling 14 lakhs and requested them to consider the payment of 1 lakh. Regarding

payment, they did not admit any payment or any assertion is made anywhere in the complaint. Again it is a disputed question of fact of what was the accepted amount paid by the petitioner to the respondents.

8. This Court can exercise its inherent jurisdiction under Section 482 of Cr.P.C. when the allegations made in the complaint on its face value if accepted entirety constitutes an offence prima facie, this Court cannot quash the proceedings in view of the guideline No.1 of Apex Court in ***State of Haryana*** *vs.* ***Bhajan Lal***[1]**.** Moreover, the grounds raised before this Court, i.e., discharge of debt, utilizing the signed blank cheques and promissory notes and payment of certain amounts etc., are all disputed questions of fact and these aspects cannot be considered while exercising jurisdiction under Section 482 of Cr.P.C.

9. In similar circumstances in ***Samapalle Satyanarayana Rao v. Indian Renewable Energy of Development Agency Limited***[2] the Apex Court held that when a cheque is issued as security for payment of loan due, it can be said to be issued in lieu of discharge of legally enforceable debt and the court has to look into the allegations made in the complaint, if it would constitute the offence punishable under Section 139 of Negotiable Instrument Act, 1881, the court cannot quash the proceedings and disputed questions of fact cannot be decided while exercising jurisdiction under Section 482 Cr.P.C.

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[1] 1992 Supp.(1) SCC335
[2] AIR 2016 SC 4363

10. The allegations made in the petition are disputed questions of fact which cannot be gone into while exercising jurisdiction under Section 482 Cr.P.C. When cheques and promissory notes are admitted to have been issued, the presumption that they were issued towards discharge of legally enforceable debt, it is a disputed question of fact. The Apex Court also further held that while exercising jurisdiction under Section 482 Cr.P.C., the Court cannot record any findings on disputed questions of fact. If the principle in the above judgment applied to the present facts of this case, this Court cannot quash the proceedings since the grounds urged before this Court are duly based on facts. Hence, I find no ground to quash the proceedings.

11. In the result, the petition is dismissed at the stage of admission. However, it is open for the petitioner to raise all these pleas during trial before the XIV Additional Chief Metropolitan Magistrate.

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

M. SATYANARAYANA MURTHY, J

Date: 20.12.2016
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