

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15915 of 2016

ORDER:

This Criminal Petition is filed by the petitioner/accused, under Section 482 of Cr.P.C., to quash the proceedings in S.T.C.No.819 of 2015 pending on the file of the II Additional Judicial First Class Magistrate, Madanapalle, Chittoor District, alleging that the complainant filed said S.T.C. under Section 200 of Cr.P.C. for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, for dishonour of cheque bearing No.153239 dated 29.07.2015 for a sum of Rs.53,00,000/- drawn on Adarsh Bank, Jeedimetla Branch, after compliance of necessary formalities under the Negotiable Instruments Act.

2. The contest of petitioner is that the petitioner, after passing of the arbitration award in A.R.C.No.492 of 2013, filed an appeal in A.O.P.No.248 of 2015 before the District Court under Section 34 of the Arbitration and Conciliation Act, 1996 ('the Act', for brevity) and during the pendency of the said appeal, petitioner presented the cheque and issued notices for which, reply notice was issued, but the complainant, suppressing the reply notice and the pendency of the Arbitration O.P., filed the present complaint and thereby, complaint is liable to be quashed.

3. During hearing, Sri Bhaskar Gandham, learned counsel for the petitioner, vehemently contended that when Arbitration O.P. is pending

challenging the order passed by arbitrator, would operate as automatic stay of all further proceedings under Section 36 of the Arbitration and Conciliation Act, but suppressing the factum of filing Arbitration O.P. and reply notice issued by the petitioner to the notice issued by the counsel for the complainant, the complainant filed the present S.T.C.No.819 of 2015 on the file of the Court below and such suppression of pendency of the Arbitration O.P. is sufficient to quash the proceedings.

4. Admittedly, cheque was issued on 10.08.2015 and the Arbitration O.P. challenging the award passed by arbitrator in A.R.C.No.492 of 2016 was filed on 25.11.2014. The cheque was issued after passing of the award and the same was presented for collection and it was dishonoured. Filing of Arbitration O.P. under Section 34 of the Arbitration and Conciliation Act itself would operate as automatic stay under Section 36 the Arbitration and Conciliation Act is prior to the amendment of the Arbitration and Conciliation Act. But by virtue of amendment to the said Act in the year 2015, the benefit under Section 36 of the Arbitration and Conciliation Act is no more available and there is no deemed stay of execution of the arbitration award, subsequent to the amendment of Section 26 of the Act in the year 2015. Therefore, there is absolutely no stay against the execution of the arbitration award. Hence, presentation of cheque for collection and its dishonour by the bank and filing of complaint on account of dishonour of cheque even after demand by registered notice is not a ground to quash the proceedings.

5. The other contention of the counsel for the petitioner that the reply notice issued by the petitioner to the notice issued by the counsel for the complainant and the pendency of the arbitration O.P. was not disclosed in the complaint and that itself is a ground to quash the proceedings, is without any substance. Except the essential ingredients viz., dishonour of the cheque on presentation for collection issued in discharge of whole or part of legally enforceable debt or any other liability; issuance of notice demanding payment of the amount covered under the cheque within the specified time; and lodging a complaint within the time specified thereafter, no other details need be disclosed in the complaint under Section 138 of the Negotiable Instruments Act. Therefore, failure to disclose the pendency of arbitration O.P. and reply to the notice issued by the counsel for the complainant in the complaint under Section 138 of the Negotiable Instruments Act, 1881, are not mandatory.

6. Moreover, powers of this Court under Section 482 are limited. Such powers can be exercised sparingly so as to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under Cr.P.C., depending upon the facts of a given case. In *State of Haryana Vs. Bhajan Lal*¹, the Apex Court laid down guidelines to exercise jurisdiction under Section 482 Cr.P.C. According to guideline No.1, Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie

¹ 1992 Supp (1) SCC 335

constitute any offence or make out a case against the accused, this Court can exercise jurisdiction under Section 482 of Cr.P.C to quash the proceedings. In the instant case, allegations made in the complaint filed by complainant, on its face value, constitute an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and therefore, on this ground, the proceedings cannot be quashed. Moreover, while exercising jurisdiction under Section 482 of Cr.P.C., this Court need not meticulous analyse the case before the trial to find out whether the case ends in conviction or acquittal, as held by the Apex Court in *Mrs.Dhanalakshmi Vs. R.Prasanna Kumar and others*².

7. In view of my foregoing discussion, I find no merit in this Criminal Petition to quash the proceedings in S.T.C.No.819 of 2015 on the file of the II Additional Judicial First Class Magistrate, Madanapalle, Chittoor District, and the Criminal Petition is liable for dismissal.

8. In the result, the Criminal Petition is dismissed at the stage of admission. Miscellaneous petitions, if any, pending in this Criminal Petition, shall stand closed.

M. Satyanarayana Murthy, J

11th November, 2016
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² AIR 1991 SC 494