

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.16630 of 2016

ORDER:

This Criminal Petition, under Section 482 Cr.P.C., is filed to quash the proceedings in C.C.No.38 of 2016 on the file of Special Judicial Magistrate of First Class, Excise Court, Ongole, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act').

Respondent No.2 filed a complaint before the Special Judicial Magistrate of First Class, Excise Court, Ongole, for the offence punishable under Section 138 of the Act, alleging that the petitioner issued cheque towards discharge of debt due and, on presentation, it was returned for want of sufficient funds. After complying with necessary formalities under Section 138 of the Act, complaint was filed before the Court, since the petitioner failed to repay the amount covered by the cheques, as required under Section 138(b) of the Act, the present petition is filed under Section 482 Cr.P.C. on three grounds.

The first ground is that notice, as required under Section 138 of the Act, was not sent to the correct address of the petitioner as he is residing at Hubli carrying on contract business and cheque was drawn on Hubli Branch. The petitioner handed over blank cheques to one Sri Srinivas Rao to provide bank guarantee but he did not return those cheques, though, he failed to secure bank guarantee.

Thereupon he gave complaint to police and registered a case in Crime No.15 of 2016 of Kondepi Police Station for the offences punishable under Sections 420 and 506 IPC. Later, after investigation filed charge sheet against the said Srinivasa Rao. Therefore, cheque was not issued towards discharge of legally enforceable debt and, thereby, the proceedings cannot be continued against the petitioner since it is an abuse of process of Court.

The power of this Court, under Section 482 Cr.P.C, is limited and such power can be exercised sparingly, in exceptional circumstances, only to give effect to the orders passed by the Court; to prevent abuse of process of Court; and to meet ends of justice. In the present case, the first and foremost ground raised is that notice, as required under Section 138 of the Act, was not sent to the correct address of the petitioner. As seen from the returned cover, it was returned with an endorsement that the addressee was not residing at the present address during those days. Thus it means that the petitioner was residing earlier, but the address mentioned in various documents is Hubli at Karnataka. Whether the address mentioned on the postal cover of the legal notice is the address where the petitioner resided or not is a question of fact to be decided during trial by adducing evidence. If suppose notice was sent to the last known address or the correct address of the petitioner, the Court can draw a presumption under Section 27 of the

General Clauses Act that notice is deemed to be served on the petitioner. Such presumption is again a rebuttable presumption and it can be dispelled by adducing evidence independently by the petitioner or eliciting something in the cross-examination. Therefore, such disputed question of fact cannot be decided while deciding application under Section 482 Cr.P.C.

The second ground urged by the petitioner is that the petitioner lodged a report with Kondepi Police Station regarding failure of the said Srinivasa Rao to return cheques though he failed to provide bank guarantee. Crime was registered against him and charge sheet was filed against the said Srinivasa Rao. Learned counsel for the petitioner has also drawn the attention of this Court to the cheque numbers mentioned in the complaint and the disputed cheque in the complaint, by itself, is not a ground to quash the proceedings. It is again a disputed question of fact whether these cheques were issued towards discharge of legally enforceable debt.

Section 139 of the Act deals with presumption. According to it, whenever a cheque was issued, the Court shall draw a presumption that it was issued towards discharge of legally enforceable debt. Again it is a rebuttable presumption. As long as the presumption is in favour of the respondent, this Court cannot quash the proceedings under Section 482 Cr.P.C. An identical question came up for consideration in **Sampelly Satyanarayana Rao v. Indian**

Renewable Energy Development Agency Ltd.¹, wherein the Supreme Court held that, while exercising power under Section 482 Cr.P.C, the High Court cannot go into disputed questions of facts and record its finding and, even if cheques were issued, presumption would be in favour of the bearer and such question has to be decided during trial and the proceedings cannot be quashed. Therefore, the law declared by the Supreme Court in **Sampelly Satyanarayana Rao** (1 supra) would directly apply to the present facts of the case. Consequently, it is difficult for this Court to exercise power under Section 482 Cr.P.C. and quash the proceedings at this stage in view of the disputed questions of fact referred supra.

Learned counsel for the petitioner, at the end of his argument, made a request to order joint trial in C.C.No.38 of 2016 and C.C.No.511 of 2016 pending on the file of Additional Judicial First Class Magistrate, Kandukur, for the offences punishable under Sections 420 and 506 IPC and drawn the attention of this Court to the judgment reported in **Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd**², wherein the Supreme Court made the following observations:

“We hope and trust that the investigation shall be completed and a final report shall be filed before the appropriate court at an early date. In the event, any charge sheet is filed and the cognizance of the offence is taken, both the cases should be tried by the same Court, one after the other, and judgment in both the cases must be delivered at the same time”.

¹ AIR 2016 SC 4363

² 2008(13) SCC 678

In any view of the matter, C.C.No.38 of 2016 is pending on the file of Additional Judicial Magistrate of First Class, Ongole, whereas C.C.No.511 of 2016 is pending on the file of Additional Judicial Magistrate of First Class, Kandukur. When two calendar cases are pending on the file of two different Courts, this Court cannot issue such directions unless the petitioner filed an application before the competent Court to withdraw calendar case pending on the file of one Court and transfer the same to other Court. Therefore, at this stage, it is difficult to issue such directions to the Magistrate to try both the cases simultaneously as they are pending on the file of two different Courts in two different areas.

In any event, the relief claimed in the present petition is to quash the proceedings in C.C.No.38 of 2016 pending on the file of Additional Judicial Magistrate of First Class, Ongole. During hearing, learned counsel for the petitioner made a request to issue direction to try both the calendar cases simultaneously.

It is settled principle of law that the Court cannot travel beyond the pleadings or beyond the relief the petitioner claimed as held by the Apex Court in **Gajanan Krishnaji Bapat. v. Dattaji Raghobaji Meghe³** . The Supreme Court held that the court cannot consider any fact which is beyond the pleadings of the parties. Pleadings and particulars are required to enable the court to decide the rights of the parties

³ AIR 1995 SC 2284

in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is settled legal proposition that "as a rule relief not founded on the pleadings should not be granted." Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide: **Sri Mahant Govind Rao v. Sita Ram Kesho**⁴; **M/s. Trojan & Co. v. RM. N.N. Nagappa Chettiar**⁵; **Raruha Singh v. Achal Singh**⁶; **Om Prakash Gupta v. Ranbir B. Goyal**⁷; **Ishwar Dutt v. Land Acquisition Collector**⁸; and **State of Maharashtra v. Hindustan Construction Company Ltd.**⁹)

Under those circumstances, granting such relief by exercising power under Section 482 Cr.P.C. is beyond the claim in the petition which this Court cannot issue.

In view of the disputed questions of fact to be decided by the Court by applying the principal laid down in **Sampelly Satyanarayana Rao v. Indian Renewable Energy**

⁴ (1898) 25 Ind. App. 195

⁵ AIR 1953 SC 235

⁶ AIR 1961 SC 1097

⁷ AIR 2002 SC 665

⁸ AIR 2005 SC 3165

⁹ (2010) 4 SCC 518

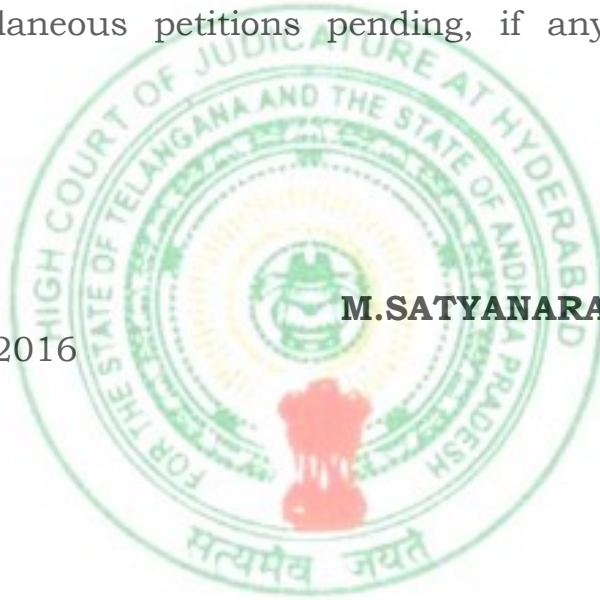
Development Agency Ltd.¹⁰, I find no ground to quash the proceedings at this stage.

The Criminal Petition is liable to be dismissed and is, accordingly, dismissed at the stage of admission. However, it is left open to the petitioner to file an appropriate application before competent Court, under Section 408 Cr.P.C, to withdraw and transfer one of the matters pending on the file of one of the Courts to other Court and seek appropriate relief.

Miscellaneous petitions pending, if any, shall stand disposed of.

Date:14.12.2016
usd

M.SATYANARAYANA MURTHY,J



¹⁰ AIR 2016 SC 4363