

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.16171 OF 2016

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.254 of 2016 on the file of I Special Magistrate Court at Erra Manzil, Hyderabad registered for the offences punishable under Sections 138 and 142 of Negotiable Instruments Act on the following grounds:

- (1) The allegations made in the complaint are false.
- (2) The cheque was not issued towards discharge of legally enforceable debt and that in case the trial is commenced the petitioner would be put to irreparable loss and injury and prayed to quash the proceedings.

Learned counsel for the petitioner contended that the allegations made in the complaint are false.

The truth in the allegations made in the complaint cannot be looked into while deciding an application filed under Section 482 of Cr.P.C. to quash the proceedings in view of the judgment of the Apex Court rendered in "**Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.**"¹

However, at best the Court can decide the application filed under Section 482 of Cr.P.C. based on the allegations made in the complaint itself. But here based on the allegations made in the complaint, this Court cannot quash proceedings while exercising jurisdiction under Section 482 of Cr.P.C.

¹ AIR 2016 Supreme Court 4363

Learned counsel for the petitioner further contended that the cheque was not issued towards discharge of legally enforceable debt.

There is a presumption under Section 139 of Negotiable Instruments Act. According to it, the Court shall presume unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, or any debt or other liability. When once the cheque is issued by the drawer a presumption under Section 139 of Negotiable Instruments Act in favour of the holder must follow. The Apex Court in “**M/s Modi Cements v. Kuchil Kumar Nandi**”² held that when the cheque was issued by the drawer, a presumption shall be drawn and issuing instructions to stop payment would amount to offence punishable under Section 138 of Negotiable Instruments Act.

The presumption under Section 139 of Negotiable Instruments Act is a rebuttable presumption and such presumption can be rebutted either by eliciting something in the cross-examination of prosecution witnesses or by adducing independent evidence to dispel the statutory presumption contained under Section 139 of Negotiable Instruments Act. But at this stage, in view of the presumption under Section 139 of Negotiable Instruments Act, it is difficult to conclude that the cheque was not issued towards legally enforceable debt and on that ground the proceedings in C.C.No.254 of 2016 on the file of I Special Magistrate Court at Erra Manzil, Hyderabad cannot be quashed.

² AIR 1998 SC 1057

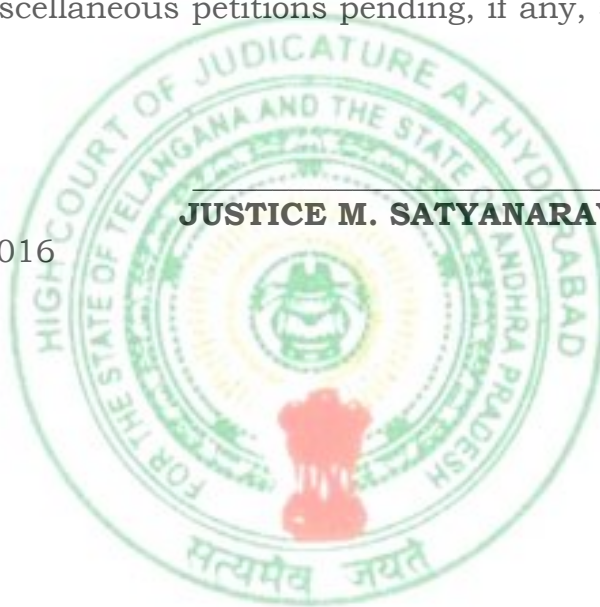
On an overall consideration of the entire material available on record, I find no ground to quash the proceedings by exercising jurisdiction under Section 482 of Cr.P.C. as the allegations made in the complaint on their face value would constitute an offence punishable under Section 138 of Negotiable Instruments Act in view of the guideline No.1 laid by the Apex Court in “***State of Haryana v. Bhajan Lal***³”. Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

Date:22.11.2016
Ksp

JUSTICE M. SATYANARAYANA MURTHY



³ 1992 Supp. (1) SCC 335