

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15879 OF 2016

ORDER:

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.72 of 2016 pending on the file of Judicial Magistrate of First Class, Special Mobile Court, Srikakulam, for the offence punishable under Section 138 of Negotiable Instrument Act, 1881 (for short, 'the Act') on the sole ground that the petitioner never borrowed any amount from the second respondent, executed any promissory note and issued any cheque, but those cheques were misplaced, as three cheques were misplaced, he gave information to the Bank authorities about the loss of cheques, but the Bank authorities dishonoured cheques. As such, in the absence of any legally enforceable debt due to the complainant, the complaint is not maintainable.

The second respondent filed complaint for the offence punishable under Section 138 of the Act alleging that the petitioner borrowed an amount of Rs.10 lakhs from the complainant for his business investment and family expenses, and executed promissory note to repay the same either to him or his order as and when demanded. The petitioner issued a cheque bearing No.857400 drawn on State Bank of India, Ramalaxmana Branch, Srikakulam Branch, dated 06.02.2016 for Rs.9,80,000/- in lieu of discharge of part of the debt due under promissory note dated 05.04.2015.

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The cheque was deposited in Union Bank of India, Srikakulam Branch, for collection and in turn it was returned with an endorsement, for the reason 'no sufficient funds', thereupon the second respondent issued notice within the prescribed time demanding the petitioner for payment of the amount covered by the cheque, but the petitioner got issued a reply denying the entire transaction and contended that he never issued cheque to discharge the part of debt covered by promissory note and that those cheques were misplaced and the same was intimated to the Bank authorities, but these questions are disputed questions of fact, and at this stage, while exercising jurisdiction under Section 482 of Cr.P.C. cannot decide such disputed questions, since the jurisdiction of this court is limited and at best, this Court is entitled to look into the allegations made in the complaint and find out whether those allegations on its face value would constitute an offence under section 138 of the Act or not, and at the same time this Court cannot look into any other evidence meticulously to decide maintainability of complaint while exercising jurisdiction under Section 482 of Cr.P.C., since the defence set up by the petitioner is a disputed question of fact, in view of law declared by the Apex Court in **SANAPALLE SATYANARAYANA RAO v. INDIAN RENEWABLE ENERGY OF DEVELOPMENT AGENCY LIMITED**¹.

Hence, I am not inclined to exercise power under Section 482 Cr.P.C. to quash the proceedings in C.C. No.72 of 2016 pending on the file of Judicial Magistrate of First Class, Sopecial

¹ AIR 2016 SC 4363

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Mobile Court, Srikakulam, consequently the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed, leaving it open to the petitioner to raise his defence before the learned Magistrate.

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

M. SATYANARAYANA MURTHY, J

Date: 10.11.2016
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