THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.12620 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in C.C.No.1126 of 2012 pending on the file of the I Additional Judicial First Class Magistrate, Narsaraopet, Guntur District, for the offences allegedly committed by the petitioners punishable under Section 138, 141 & 142 of Negotiable Instruments Act.

It is the case that the petitioners 2 to 6 are the active partners of the first petitioner firm. The first petitioner allegedly issued a cheque for Rs.70,00,000/- bearing No.001223 dated 27.06.2014 drawn on IDBI, Budhawarpet Branch, Kurnool, towards discharge of the debt due in the business transactions to the defacto complainant. On presentation of the cheque by the defacto complainant with the collecting bank, i.e. Axis Bank, Narasaraopet Branch, Guntur District, the cheque was dishonoured for insufficiency of funds and the same was intimated with a return memo dated 27.08.2014 with an endorsement "Exceeds Arrangement". Thereafter, the defacto complainant got issued legal notice on 08.09.2014 in compliance with Section 138 of Negotiable Instruments Act, demanding the accused for payment of the amount due under the dishonoured cheque within 15 days from the date of receipt of the notice.

Reply notice dated 26.09.2014 was issued by the petitioners/accused denying their liability. Therefore, the complainant filed complaint against the petitioners for the said office. Now, the present criminal petition is filed to quash the proceedings against the accused.

The first ground is that the cheque was not issued towards discharge of either whole or part of the legally enforceable debt. The second contention is that the petitioners 3 to 6 are not active partners, as the business is a joint family business, though constituted as a partnership in connection with the day to day affairs of the petitioners 3 to 6, they cannot be held liable and the proceedings cannot be continued against them for the said offence punishable under Section 138 of Negotiable Instruments Act and it amounts to abuse of process of Court.

During hearing, learned counsel for the petitioners, reiterated the contentions canvassed in the petition and specifically contended that the petitioners 3 to 6 are no way concerned with the business affairs and the second petitioner alone is attending the day to day affairs of the first petitioner firm and therefore, at best, the first and second petitioners alone are liable for payment of the debt covered by the cheque and liable for punishment, if any punishable under Section 138 of Negotiable Instruments Act.

Per contra, learned counsel for the respondent Sri P. Vishnuvardhan Reddy while contending that the petitioners are active partners in the business, attending to day to day affairs of the first petitioner firm, drawn attention of this Court to the allegations made in paragraph 1 of the complaint where a specific allegation is made that the petitioners 2 to 6 are its active partners and they are participating in regular course of business of the partnership firm. When such allegation is made in the complaint, the complaint cannot be quashed on that ground. It is also further contended that whether the cheque was issued either to discharge part or whole of the legal enforceable debt is a legal question of fact and it cannot be decided at this stage while exercising power under Section 482 of Cr.P.C.

The first and foremost ground is that the cheque was not issued in lieu of discharge of whole or part of legally enforceable debt. Whether the cheque was issued towards discharge of legal enforceable debt or not is a matter of evidence and it is a disputed question of law. Such disputed question of law cannot be decided at this stage while exercising power under Section 482 Cr.P.C. Added to that, under Section 139 of Negotiable Instruments Act, there is a statutory presumption that the cheque was issued by the drawer towards discharge of legal enforceable debt and such presumption is rebuttable and can be dispelled by adducing independent evidence by the accused or by eliciting anything in the cross-examination of witnesses examined on behalf of the complainant. Therefore, till such presumption is dispelled or rebutted, the presumption is in favour of the complainant that the cheque was issued towards discharge of legally enforceable debt.

The first respondent filed complaint against all the petitioners arraying them as accused 1 to 6, making specific allegations in paragraph no.1 of the complaint that the first petitioner is a registered partnership firm and petitioners 2 is the Managing Partner and petitioners 3 to 6 are its active partners participating in the day to day business affairs of the first petitioner firm. This allegation is sufficient to proceed against all the petitioners for the offences punishable under Section 138 of Negotiable Instruments Act, subject to proof of dishonour of the cheque and other requirements to find them guilty for the offence punishable under Section 138 of Negotiable Instruments Act. Therefore, on this ground, the proceedings cannot be quashed in C.C.No.1126 of 2012 pending on the file of the I Additional Judicial First Class Magistrate, Narsaraopet, Guntur District.

A similar question came up before the Apex Court in **Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.**[1]. The facts of the above case are almost identical with regard to the issue of cheque towards discharge of legally enforceable debt, where the Apex Court made it clear that the disputed question of fact cannot be gone into while exercising power under Section 482 of Cr.P.C and the proceedings cannot be quashed on the ground that the cheque was not issued towards the discharge of legal enforceable debt adverting to Section 139 of Negotiable Instruments Act. Hence, I find that it is not a ground to quash the proceedings at this stage. Consequently, the criminal petition is liable to be dismissed at the stage of admission.

At this stage, learned counsel for the petitioner Sri Challa Srinivas Reddy requested this Court to dispense with the appearance of the petitioners 3 to 6 on the dates of adjournments, except on the dates of examination under Section 251 and 313 and also on the dates of pronouncement of judgment.

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[1] 2016 (2) ALD (Crl.) 809 (SC)

Acceding to the request of the learned counsel for the petitioner, I deem it appropriate to direct the petitioners 3 to 6 to file an application under Section 205 Cr.P.C, after issuing notices to the complainant/first respondent and on filing such application, concerned Magistrate shall consider the application and pass appropriate orders in accordance with law, after hearing leaned counsel for both the parties.

In the result, the criminal petition is dismissed

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:16.12.2016
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