

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.17130 of 2016

ORDER :

This criminal petition is filed by the petitioner/accused under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to quash the proceedings in C.C.No.124 of 2016 pending on the file of the II Special Judicial Magistrate of First Class, Guntur, for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881, on the two grounds. The first ground is that no notice as contemplated under Section 138 proviso (b) of the Act was served intimating about the dishonour of the cheque calling upon him to pay the amount covered by the cheque. The second ground is that by the date of alleged execution of promissory notice dated 12.07.2014, the petitioner was at Camp Office ie., Special Officer (S), Tribal Welfare, Bhadrachalam, Khammam District. Thereby, the execution of promissory notice itself is doubtful.

2. The complainant-2nd respondent herein filed complaint for the offence punishable under Section 138 of the Act alleging that the petitioner borrowed an amount of Rs.30,00,000/- on 12.07.2014 and executed a promissory notice on the even date agreeing to repay the same with interest at 36% per annum either to the complainant or to his order on demand. Thereafter, the petitioner issued a cheque bearing No.192279 dated 14.12.2015 for Rs.45,30,000/- drawn on Andhra Bank, Vidya Nagar Branch, Hyderabad, for discharge of the due amount in part under promissory note. The cheque was presented

in Syndicate Bank, Mangalagiri Road, Guntur, for collection. But, when it was sent for clearance, the Andhra Bank, Vidya Nagar Branch, Hyderabad, dishonoured the cheque with an endorsement 'funds insufficient' and issued a memo. Thereupon, the 2nd respondent in compliance of Section 138 proviso (b) of the Act issued a notice dated 23.01.2016, but it was returned as 'not claimed'. Thereupon, within the period of limitation, the 2nd respondent filed complaint on 02.03.2016 before the Magistrate.

3. The main contention of the petitioner is that the notice issued under Section 138 proviso (b) of the Act is not served, enabling him to issue an appropriate reply. The 2nd respondent sent the notice dated 23.01.2016 to the last known address of the petitioner i.e., "N. Vamsidhar, S/o.Krishna Reddy, R/o.1st Floor, Sai Vamsika Residency, Plot No.34 & 35, Vinayak Nagar, Peerzadiguda Village, Ghatkesar (M), Ranga Reddy District, Telangana District". The address mentioned on the promissory notice is "N. Vamsidhar, S/o.Krishna Reddy, R/o.Plot No.34, Sai Vamshi Residency, Vinayak Nagar, Peerzadiguda, Hyderabad." The address mentioned on the postal acknowledgment, attached notice and promissory notice are one and the same. Therefore, sending a notice to the last known address gives rise to presumption under Section 27 of the General Clauses Act and such presumption is rebuttable presumption. The Court shall presume that the notice was sent to the petitioner's correct be deemed to have been received. Therefore, the question whether the

petitioner was at his residence when the notice was tendered and intimation was given is a question of the fact and the same cannot be decided while exercising inherent power under Section 482 Cr.P.C. to quash the proceedings. Therefore, on the ground of non-service of notice as required under Section 138(b) of the Act, which is the disputed question of fact, the proceedings cannot be quashed at this stage.

4. The second ground raised before this Court is that the promissory notice was allegedly executed on 12.07.2014 and on the date of alleged execution, the petitioner was on duty at Bharat Scouts & Guides in the office of Special Officer (S), Tribal Welfare, Bhadrachalam, Khammam District, from 10.07.2014 to 14.07.2014. Again, the presence of the petitioner at the place of execution of promissory notice is a disputed question of fact and at best his presence can be proved only by adducing the evidence during trial. Therefore, on this ground, the proceedings in C.C.No.124 of 2016 pending on the file of the II Special Judicial Magistrate of First Class, Guntur, cannot be quashed.

5. In the recent judgment in **Sanapalle Satyanarayana Rao v. Indian Renewable Energy of Development Agency Limited**¹, where the Hon'ble Apex Court while deciding an identical situation held that a disputed question of fact cannot be gone into while deciding the application under Section 482 Cr.P.C. for quashment of

¹ AIR 2016 SC 4363

the proceedings in calendar case for the offence punishable under Section 138 of the Act.

6. In view of the law declared by the Apex Court in the above judgment and in view of the disputed questions of fact to be decided by the trial Court, the proceedings in C.C.No.124 of 2016 cannot be quashed at this stage. However, it is left open to the petitioner to raise all the contentions before the trial Court.

7. Accordingly, the criminal petition is dismissed at admission stage.

8. Miscellaneous petitions pending, if any, shall stand closed.

27th December 2016

mar

M. SATYANARAYANA MURTHY, J

