

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.2738 OF 2016

ORDER:

This petition is filed under Section 482 of Cr.P.C. to quash the proceedings in C.C.No.3 of 2016 on the file of XIX Additional Chief Metropolitan Magistrate Court at Hyderabad, for the offences punishable under Section 138 of the Negotiable Instruments Act.

The main contention of the petitioner is that the cheque bearing No.164759 was issued as a token of security to the second respondent who is a contractor for laying roads. Therefore, the cheque was not in lieu of discharge of amount due either in full or in part of legally enforceable debt. Therefore, the petitioner is not liable to pay the amount covered by alleged dishonoured cheque.

The other contention of the petitioner is that the petitioner was not a Director of the Company as on the date of filing of the complaint and bouncing of the cheque and therefore, there is no cause of action for the petitioner.

As seen from the allegations made in para 4 (c) of the petition, the cheque was admittedly issued but it was taken as security in favour of respondent No.2 but this question was already decided by the apex court in *SAMPELLE SATYANARAYANA RAO VS. INDIAN RENEWABLE ENERGY DEVELOPMENT AGENCY LIMITED* ⁽¹⁾. Therefore, on this ground, complaint cannot be quashed.

¹ AIR 2016 SC 4363

Added to that, there is a presumption under Section 139 of the Negotiable Instruments Act that the cheque was issued in favour of the bearer of the cheque towards legally enforceable debt. Therefore, such disputed questions cannot be decided in a petition filed under Section 482 of Cr.P.C.

The second ground is that the petitioner was not a Director of the Company as on the date of dishonour of cheque but admitted that cheque was issued by him. Since, no material is brought on record to prove that he was not the Director of the company as on the date of presentation of the cheque and it is dishonoured, in the absence of material, it is difficult to accept the contention of the petitioner to quash the proceedings by exercising powers under Section 482 of Cr.P.C.

It is settled law that a complaint can be quashed only when the allegations made in the complaint would not prima facie constitute any offence on its face value, but here, the disputed questions of facts are with regard to issue of cheque as a security and petitioner was not a Director at the time of presentation of cheque. Those disputed questions can be decided only during the course of trial but not at this stage. Even otherwise in the decision of the apex court reported in *MRS. DHANALAKSHMI v. R.PRASANNA KUMAR AND ORS* ⁽²⁾ while exercising the jurisdiction under Section 482 of Cr.P.C., this court is not required to analyze the evidence meticulously as the jurisdiction is limited under Section 482 of Cr.P.C.

² AIR 1990 SC 494

Therefore, at this stage, it is difficult for me to accept this contention and consequently, the present petition is liable to be dismissed.

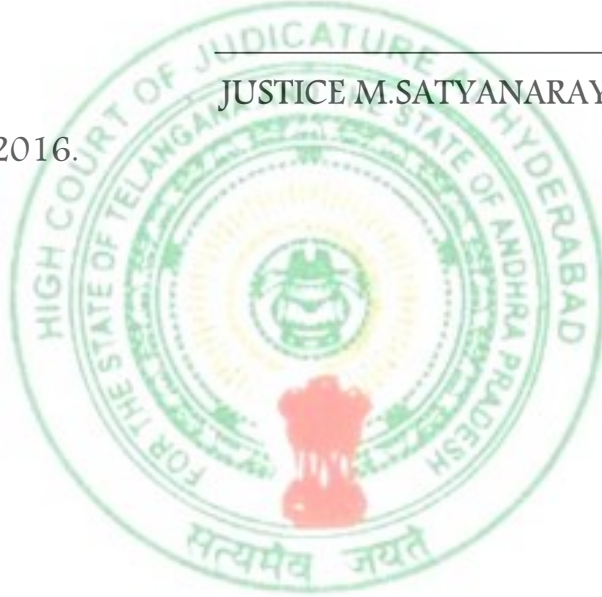
In the result, this Criminal Petition is dismissed at the stage of admission giving liberty to the petitioner to raise all these contentions before the trial court.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 1-12-2016.

Dvs.



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Dated 1-12-2016.

Dvs