

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.16084 OF 2016

ORDER:

This Criminal Petition is filed under Section 482 of Cr.P.C. to quash the proceedings in C.C.No.93 of 2016 pending on the file of 1st Special Magistrate, Erramanzili, Hyderabad on the ground that the claim for payment of debt was the subject matter of O.S.No160 of 2012 filed before I Additional Chief Judge, City Civil Court, Secunderabad and the claim in the said suit was settled out side the court on 29-3-2014 and that the petitioner contended from the beginning that the cheques were collected from the firm during the life time of husband of the defacto complainant and therefore, complaint cannot be maintained since there was no legally enforceable debt.

During hearing, learned counsel limited his argument to the above contentions and no other contention.

It is the specific case of the petitioner that the debt payable to the respondent was the subject matter of O.S.No.160 of 2012 filed before the I Additional Chief Judge, City Civil Court, Secunderabad for recovery of amount based on cheque and matter was settled out of court by the intervention of the elders and well wishers on 29-3-2014 whereas the subject matter of the cheque is dated 10-6-2015 i.e., almost one year three months after the alleged compromise.

While exercising jurisdiction under Section 482 Cr.P.C., this court cannot undertake roving enquiry to decide whether the cheque was issued in discharge of legally enforceable debt or not. In proceedings under Section 482 of Cr.P.C., this court cannot decide the truth or otherwise of the allegations made in the reply notice issued to the notice issued by the respondent in compliance of Section 138 B of the Negotiable Instruments Act. Therefore, it is difficult for this court to conclude at this stage that the cheque dated 10-06-2015 was issued in lieu of discharge of part or whole debt due to the complainant/respondent which is the subject matter of O.S.No.160 of 2012 since there is a gap of one year three months to the settlement of claim and issue of cheque.

All these matters are the questions of disputed facts and they can be decided only during trial but not by exercise of jurisdiction under Section 482 of Cr.P.C.

It is settled law that this court can exercise inherent power under Section 482 of Cr.P.C. squarely in exceptional circumstances, more particularly, where the allegations made in the complaint would not constitute the offence on the face value of those allegations as per the guideline No.1 of Supreme Court laid down in *STATE OF HARYANA V. BHAJANLAL* ⁽¹⁾ which reads as follows:

“(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and

¹ 1992 supplement (1) S.C.C.335

accepted in their entirety do not prima facie constitute any offence or make out a case against the accused"

Here the allegations made in the complaint are on the face value of those allegations would constitute the offence punishable under Section 138 of Negotiable Instruments Act.

Therefore, I am not inclined to exercise jurisdiction under Section 482 of Cr.P.C. to quash the proceedings in C.C.No.93 of 2016 pending on the file of 1st Special Magistrate, Erramanzili, Hyderabad. However, it is left open to the petitioner to raise all these contentions before the trial court and on raising such contentions, the trial court is directed to decide the matter.

With the above observation, this Criminal Petition is dismissed.

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

JUSTICE M.SATYANARAYANA MURTHY

Dated 21-11-2016

Dvs.

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL PETITION No.16084 OF 2016

Dated 21-11-2016

Dvs