THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16473 of 2016

ORDER

This petition under Section 482 Cr.P.C. is filed by the petitioner/accused to quash the proceedings in C.C.No.700 of 2016 on the file of III Additional Chief Metropolitan Magistrate, Vijayawada, Krishna District, registered for the offences punishable under Sections 138 and 142 of Negotiable Instruments Act, 1881 (for short 'the Act').

2. Respondent No.2 filed complaint before the learned III Additional Chief Metropolitan Magistrate, Vijayawada, alleging that the petitioner borrowed an amount of Rs.12 lakhs for purchase of vehicle bearing No.AP 04 X 2609 on 18.04.2013 agreeing to repay the same with interest at 12% per annum in 30 equal monthly installments @ Rs.51,000/- per month and he also executed an agreement of loan on the same date. Accordingly, petitioner paid an amount of Rs.36,000/- in 14 installments and also paid Rs.7,50,000/- in 15 installments on different occasion and thereafter, he committed default in payment of Rs.7,80,506/- towards the debt due. The petitioner also purchased another vehicle i.e., Trailer bearing No.AP 04 V 9010, availing the loan amount of Rs.10 lakhs from the second respondent on 10.03.2014 agreeing to repay the same with interest at 12% per annum in 30 equal monthly installments @ Rs.43,500/- per month and issued a cheque bearing No.969401 for Rs.19,48,506/-, drawn on IDBI Bank, Vijayawada, towards discharge of the outstanding debts payable to the second respondent on

16.07.2016. On presentation of said cheque for collection, the payee Bank dishonoured the same with an endorsement 'account closed' by issuing memo dated 19.07.2016. Thereafter, on 03.08.2016, the complainant got issued a legal notice to petitioner through registered post intimating about bouncing of the cheque and demanded him to pay the amount covered by the cheque within 15 days. Receipt of said notice was acknowledged by petitioner on 09.08.2016 and he also got issued a reply with false allegations. Thus, the amount covered by the cheque remained unpaid. Hence, the second respondent filed the complaint for the aforesaid offences.

3. The present petition is filed on various grounds. The main ground urged by petitioner is that on the date of borrowing of amount, he gave blank cheques and signed promissory note to the second respondent and subsequently, even though he discharged the entire debt, the second respondent did not return the signed promissory note and the cheques. Consequently, petitioner filed W.P.No.28183 of 2016 seeking a direction to the second respondent to handover the promissory note and the cheques issued by him at the time of borrowing of amount and therefore, he is not liable to pay any amount to the second respondent. Thus, the alleged cheque, which was issued by petitioner at the time of borrowing of amount, was presented before the Bank and on its dishonor, the second respondent filed the present complaint and therefore, there was no legally enforceable debt and consequently, issuance of cheque and its dishonor would not attract the offence under Section 138 of the

Act and prayed to quash the proceedings in C.C.No.700 of 2016 on the file of III Additional Chief Metropolitan Magistrate, Vijayawada.

4. Undoubtedly, the petitioner borrowed amounts for purchase of two vehicles as referred in the complaint. The plea of petitioner is that he discharged the entire amount due to the second respondent, but no material is produced before this Court to substantiate his contention. Moreover, he admitted about the issuance of cheque, but contended that the said cheque was issued for securing the payment of future installments and after discharge of debt, the second respondent did not return the cheque and promissory note. In the absence of any proof that he discharged the debt, the issuance of cheque at the time of borrowing of amount to secure payment of future installments, as contended by petitioner is accepted, it would attract the offence punishable under Section 138 of the Act. In the event of its presentation and dishonor, in recent judgment of the Apex Court in **Sampelly Satyanarayana Rao V. Indian Renewable Energy Development Agency Limited**[1], it was held as under:

> "At the threshold the High Court should not have interfered with the cognizance of the complaints having been taken by the trial Court. The High Court could not have discharged the respondents of the said liability at the threshold. Unless the parties are given opportunity to lead evidence, it is not possible to come to a definite conclusion as to what was the date when the earlier partnership was dissolved and since what date the respondents ceased to be the partners of the firm".

[1] AIR 2016 SC 4363

Therefore, on the ground that the petitioner issued cheque as security for payment of future installments, the proceedings in C.C.No.700 of 2016 on the file of III Additional Chief Metropolitan Magistrate, Vijayawada, cannot be quashed.

5. The second contention of petitioner is that he discharged the entire debt due to the second respondent. It is a disputed question of fact which cannot be decided at this stage while exercising jurisdiction under Section 482 Cr.P.C. in view of the principle laid down in the above judgment.

6. Except two grounds, no other ground is raised by petitioner before this Court to quash the proceedings. Therefore, in view of my observations in the above paragraphs, I find no ground to quash the proceedings in C.C.No.700 of 2016 on the file of III Additional Chief Metropolitan Magistrate, Vijayawada, against the petitioner in view of the limited jurisdiction of this Court under Section 482 Cr.P.C. Consequently, the Criminal Petition is liable to be dismissed.

7. In the result, the Criminal Petition is dismissed at the stage of admission. Miscellaneous petitions, if any, pending in this criminal petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

2nd December, 2016

sj