THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.14842 of 2016

ORDER:

This petition under Section 482 of Cr.P.C., is filed to quash the proceedings in C.C.No.300 of 2016 pending on the file of Judicial First Class Magistrate for Special Mobile, Eluru.

2. The 2nd respondent herein filed a complaint against the petitioner herein for the offence punishable under Section 138 of Negotiable Instruments Act, (for short 'the N.I.Act') alleging that the petitioner borrowed an amount of Rs.15,00,000/- on 13.05.2015 from the 2nd respondent and issued a cheque bearing No.092708 dated 07.10.2015 for Rs.10,00,000/- towards part discharge of the debt due under the promissory note. Thereafter the cheque was presented and it was dishonoured by the payee-Bank due to insufficient funds.

3. A notice was issued on 13.11.2015 in compliance of the provisions of the N.I.Act, calling upon the petitioner for payment of the amount covered by the cheque. The said notice was served on the petitioner on 15.11.2105. Immediately the petitioner got issued reply notice on 24.11.2015 and that the amount covered by cheque remained unpaid. Therefore, filed a complaint under Section 138 of the N.I.Act.

4. The main contention raised before this Court is that the petitioner handed over a blank signed cheque to one Ravi and Y.N.Mallika in connection with business transactions. Thereafter some difference arose between them and a complaint against the

said Ravi and Mallika was registered as Crime No.92 of 2015 for the offence punishable under Section 379 of IPC pending before Kovvur Rural Police and there is a reference about the cheque which is the subject matter of C.C.No.300 of 2016 pending before the Court. Therefore, the petitioner is not liable to pay the debt covered by promissory note and cheque and there is no legally enforceable debt.

5. Another contention of the petitioner is that the cheque was mis-utilized by the 2nd respondent taking advantage of blank signed promissory note and cheque, with the said Ravi and Mallika and got filed the present criminal case. The last ground urged by learned counsel for the petitioner is that firm was not made as a party. The complaint do not satisfy the requirements under Section 142 of the N.I.Act and based on the above grounds the petitioner sought to quash the proceedings in C.C.No.300 of 2016 pending on the file of Judicial First Class Magistrate for Special Mobile, Eluru.

6. During the course of hearing learned counsel for the petitioner Sri Godey Satish vehemently contended that the cheque and promissory note are misutilized with the aid of Ravi and Mallika by the 2nd respondent and filed a criminal complaint for the offence punishable under Section 138 of the N.I. Act. The cheque and promissory note was issued only in connection with the business transactions between Ravi and Mallika and the petitioner herein. At this stage, it is relevant to refer to the contents of the complaint filed by the petitioner against Ravi and Mallika in Crime No.92 of 2015 of Kovvur Rural Police Station, for the offence punishable under Section 379 IPC.

7. In 2nd para of the complaint in Crime No.92 of 2015 dated 07.10.2015, there is a reference about the business transaction and for his unsettled outstanding amount the said Ravi took three undated blank cheques duly signed by the petitioner vide Nos.092708, 092709, 092710 drawn on M/s.Axis Bank Limited, MVP Colony, Visakhapatnam, along with three blank white papers and three blank promissory notes duly signed by the petitioner as a security. There is clear allegation against Ravi and Mallika who allegedly obtained cheques and promissory notes and signed white papers. The petitioner is not a lay man. He is carrying on business and it is not his case either in the complaint or any where that the said cheques, promissory note etc., were obtained by any force or threat and nothing has been complained about obtaining of such cheques, promissory note etc. However, the police registered a crime for the offence under Section 379 IPC against Mallika and Ravi as if they committed theft of documents and vehicle etc., which is the subject matter of the crime pending before the concerned.

8. Curiously petitioner also filed W.P.No.38264 of 2015 for non- registration of crime. This court in penultimate para of the order directed the police authorities to register the crime following the guidelines laid down in ***Lalitha Kumari Vs Government of Uttar Pradesh and others***[1]. Therefore, the direction issued by this Court in W.P.No.38264 of 2015 is of no help to the petitioner.

---

[1] (2014) 2 SCC 1

9. It is the case of the petitioner from the beginning that taking advantage of blank signed cheques, promissory note, signed white papers handed over to Mallika and Ravi, they created the documents in C.C.No.300 of 2016 i.e., promissory note and cheque and filed criminal complaint. If really such negotiable instruments were handed over to said Ravi and Mallika they are at best incohate stamped documents under Section 20 of the N.I. Act. In similar circumstances, the Division Bench of this Court in ***Duggineni Seshagiri Rao Vs Kothapalli Venkateswara Rao***[2], held as follows :

> ***"Four things are necessary for an instrument to be a promissory note : 1) It should be in writing; 2) It should have an unconditional undertaking; 3) It should be signed by the maker; and 4) It should be in favour of certain person or to a bearer."***
>
> ***Section 20 makes inchoate stamped instruments legal instruments. The dictionary meaning of 'inchoate' is 'incomplete'. So, incomplete stamped instruments are as good as the instruments mentioned in Section 4 of the Act. Even if one looks to the definition of the 'promissory note' under Section 4, one would find that the requirements for making an instrument a promissory note do not contain the requirement of naming a person, it can be given in favour of a certain person or to bearer of the instrument. That makes it clear that, one who is holding the document is the person who derives rights out of that instrument. In other words, it would mean that the document with first three requirements as stated above, should be delivered to the payee, once it is delivered it becomes a promissory note. Name and other particulars can be filled up even at a later stage. When one reads Section 4 in conjunction with Sections 20 and 42 that is the only interpretation that can be placed on the meaning of 'promissory note' under Section 4 of the Act. Section 20 lays down that when a person signs and delivers to another person a paper stamped in accordance with law relating to negotiable instrument it becomes a negotiable instrument even if it is wholly blank or written with incomplete particulars. Similarly, Section 42 even recognizes instrument issued in the name of fictitious person to be a valid instrument.***

---
[2] 2001 (6) ALT 95 (DB)

Although Section 42 relates to bills but it also accepts that an acceptor of a bill of exchange even if it was in drawn in a fictitious name it would create a genuine claim in favour of the holder. Therefore, even if a negotiable instrument is incomplete it would be a legal instrument provided it satisfies the first three conditions.

Holder of the instrument becomes a bearer of the instrument."

10. However in another judgment reported in ***Sukhminder Singh Vs Nirbhai Singh***[3], the Punjab and Haryana High Court reiterated the same principle.

11. Earlier in C.R.P.Nos.1574, 1590 and 1591 of 1995 in ***H.Maregowda and etc. Vs Thippamma and others***[4], the Karnataka High Court held as follows :

"A reading of Section 20 of the Negotiable Instruments Act which is extracted above will reveal that the words used are either wholly blank or having written thereon an incomplete negotiable instrument. Thus, even if a blank promissory note is given, it cannot be taken as a defence to avoid a decree based on such instrument, once it is found that the document produced before the Court satisfies the requirements of a promissory note within the meaning of the Negotiable Instruments Act. The instrument may be wholly blank or incomplete in particular; in either case, the holder has the authority to make or complete the instrument as a negotiable one."

12. Here, in view of the law declared by the Division Bench of this Court, persuaded by law laid down by Karnataka High Court and Punjab and Haryana High Court, it is clear that mere issue of blank signed negotiable instrument would not take away the right of the holder of the document and entitle to fill the blank as he likes. Therefore, on this ground the complaint pending before the Judicial First Class Magistrate, Special Mobile Court, Eluru cannot be quashed at this stage.

---

[3] AIR 2013 Punjab and Haryana 77
[4] AIR 2000 Karnataka 169

13. The other ground is that notice dated 13.11.2015 was issued by the 2nd respondent herein through his advocate calling upon the petitioner to pay the amount covered by the cheque, as it was dishonoured on the ground of insufficient funds, on 04.11.2015, for which a reply was issued by the petitioner raising several contentions including obtaining blank signed cheques, promissory note, white papers etc., by Ravi and Mallika from the petitioner in connection with business transaction and utilized those documents for presentation of the cheque before the payee-Bank and the same was dishonoured. But at this stage it is difficult to decide whether the petitioner issued cheque in favour of the 2nd respondent and executed promissory note in his favour, it is the question of fact which has to be decided only after adducing evidence. Mere correspondence, filing of objections and complaints etc., is not sufficient to conclude at this stage that the cheques and promissory note allegedly obtained by Mallika and Ravi were utilised for the purpose of filing C.C.No.300 of 2016 pending on the file of Judicial First Class Magistrate for Special Mobile, Eluru. Therefore, on this ground alone, the complaint cannot be quashed.

14. The other contention is that the company was not impleaded as party to the complaint though the cheque was allegedly issued in the name of the company. As seen, the cheque was allegedly issued in favour of Ravulapalli Subramanyam Chowdary for Rs.10,00,000/- (M/s.Tejaswi Sea Trade) signed by the proprietor/authorised signatory. It is not known whether Tejaswi Sea Trade is a company or a partnership firm. But it was signed by the petitioner. Even if, it is a company, the company cannot avoid its criminal liability on the ground that the company

was not impleaded as a party in the complaint. In ***Iridium India Telecom Limited Vs Motorola Incorporated and others***[5], the similar question came before the Apex Court, wherein it was held as follows :

> ***"There is much substance in the submission that virtually in all jurisdictions across the world governed by the rule of law, companies and corporate houses can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary mens rea for the commission of criminal offences. The legal position in England and the United States has now crystallised to leave no manner of doubt that a corporation would be liable for crimes of intent. The courts in England have emphatically rejected the notion that a body corporate could not commit a criminal offence which was an outcome of an act of will needing a particular state of mind. The aforesaid notion has been rejected by adopting the doctrine of attribution and imputation. The criminal intent of the "alter ego" of the company/body corporate i.e., the persons or group of persons that guide the business of the company, would be imputed to the corporation."***

15. In the same judgment the Apex Court dealt with the scope of Section 482 Cr.P.C., and held as under

> ***"Quashment in case of economic offences/commercial transactions, breach of trust, cheating etc., exercise of power ex debito justitiae, power to be exercised sparingly and only when prosecution is launched maliciously or with ulterior motive, inherent power ought not be exercised to stifle legitimate prosecution, criminal complaint filed against respondent company on the ground that appellant company was dishonestly induced to make investment in a subsidiary company floated by respondent company thereby respondent company committed offence of cheating. Therefore, in such cases where economic offence was committed by the company, the proceedings by exercising power under Section 482 Cr.P.C., cannot be quashed."***

16. Learned counsel for the petitioner has placed reliance on judgments of the Apex Court and this Court in

[5] (2011) 1 SCC 74

S.M.S.Pharmaceuticals Ltd., Vs Neeta Bhalla and another[6], wherein the Apex Court held as follows :

> ***"Where there was almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the N.I. Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Under Section 141 what is required is that the persons who are sought to be made criminally liable should be, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of provision. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. The liability arises on account of conduct, act or omission on the part of a person and not merely on account of holding an office or a position in a company. Therefore, in order to bring a case within Section 141 of the Act, the complaint must disclose the necessary facts which make a person liable. It is necessary to specifically aver in a complaint that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied."***

17. In ***Central Bank of India Vs Asian Global Limited and others***[7], identical principle was laid down by the Apex Court. In ***K.Janaki Manoharan and another Vs Gayatri Sugar Complex Ltd., Hyderabad and another***[8]**,** this Court while deciding petition under Section 482 Cr.P.C., where taking

---

[6] (2005) 8 Supreme Court Cases 89
[7] (2010) 11 Supreme Court Cases 203
[8] 2000 (2) ALD (Crl) 283 (AP)

cognizance by the Magistrate was challenged in a complaint filed under Section 138 of N.I.Act, this Court held as under :

> ***"Mere fact that a person was a Director at the time when the offence was committed by the company cannot be automatically roped in as an accused in a case filed against the company. Person who are not actually in charge of and were responsible to the company for the conduct of its business when the offence was committed shall also be deemed to be guilty of that offence under Section 138 of the Act, provided the offence has been committed with their consent or connivance or is attributable to any negligence on their part and such persons could be a Director, Manager, Secretary or other officers of the company. It is thus obvious that only such of those Directors and officers of the company, such as, Secretary, Manager shall be deemed to be guilty of the offence punishable under Section 138 of the Act in case of an offence by a company, provided they have, played some part in the commission of offence by a company.***
>
> ***In the complaint, it is stated that the petitioners herein are the Directors of accused No.1 Company and "hence are liable under Section 141 of the Negotiable Instruments Act." According to the respondent-complainant, the petitioners are also liable for prosecution not because they were in charge of and were responsible to the company for the conduct of its business, but for the reason that they were the Directors at the relevant time. The averment in the complaint does not satisfy the ingredients of Section 141 of the Act. Every Director is not liable for the offence committed by a company punishable under Section 138 of the Act. Further proceedings against the petitioners, therefore, cannot be allowed to go on, as it would result in abuse of legal process."***

18. Here the complaint was filed by Ravulapalli Subrahmanyam Chowdary-2nd respondent herein against Garimella Ram Prasad alleging that the accused borrowed an amount of Rs.15,00,000/- on 13.05.2015 from the complainant for his business purpose on executing a promissory note on even date agreeing to repay the said amount with interest @ 24% p.a., as and when demanded by the complainant or by his order on demand. Subsequently, after repeated demands made by the complainant,

accused has issued a cheque bearing No.092708 for Rs.10,00,000/- on 07.10.2015 towards part satisfaction of debt due under pronote to be drawn on Axis Bank, M.V.P.Colony, Visakhapatnam. Thus, the specific allegation in the complaint discloses that the petitioner/accused borrowed the amount in his individual capacity for his business purpose and he was arrayed as party to the complaint as accused. Therefore, on the face of record, the case of the 2nd respondent is that the petitioner alone borrowed in his individual capacity but not representing the company. Hence, at this stage, it is difficult to accept the contention that non-impleading of the company when he is not a borrower, on the face of record the complaint cannot be quashed.

19. Learned counsel submits that in ***S.M.S.Pharmaceuticals Ltd., case*** referred supra in Para Nos.4 and 18 it was held that a company is required to be arrayed as an accused to fasten criminal liability. There is no dispute about the law declared by the Apex Court, but the same cannot be applied for the reason that the specific allegation made in the complaint is that the accused for his business in his individual capacity borrowed the amount but not on behalf of the company. Therefore, on that ground, the complaint cannot be quashed at this stage.

20. The Apex Court time and again by following the judgment in ***State of Haryana Vs Bajan Lal***[9], laid down certain guidelines to exercise jurisdiction under Section 482 Cr.P.C. In ***Shakson Belthissor Vs State of Kerala and another***[10], placing

[9] 1992 Supp (1) SCC 335
[10] (2009) 14 SCC 466

reliance on various judgments in ***Nagawwa Vs Veeranna Shivalingappa Konjalgi*[11], *MCD Vs Ram Kishan Rohtagi*[12]**, laid down certain guidelines and concluded that power under Section 482 Cr.P.C, has to be exercised sparingly and the High Court ordinarily would not exercise its inherent jurisdiction to quash the criminal proceeding, and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence; for the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence; such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus ; and if the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

21. But in the present facts of the case there are certain disputed facts which have to be enquired into by the Court and such disputed questions have to be decided only after trial and when the complaint discloses a specific case, on the face of it, the Court shall proceed and this Court cannot exercise its jurisdiction under Section 482 Cr.P.C, to quash such proceedings.

22. Thus, in view of my foregoing discussions, I find that the complaint satisfies the requirements prima-facie to proceed further and the other disputed questions have to be decided only

---

[11] (1976) 3 SCC 736
[12] (1983) 1 SCC 1

after trial but not at this stage. Hence, I find no ground to quash the proceedings at this stage by exercising power under Section 482 Cr.P.C.

23. In the result, the Criminal petition is dismissed. However, the observations made herein will have no bearing on the trial of the case and the learned trial Judge is directed to decide the lis pending before it, uninfluenced by the observations made herein.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

21st October, 2016.
Rds

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.14842 of 2016

Dated : 21.10.2016

Rds