

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15671 OF 2016

ORDER:

This criminal petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed to set aside the proceedings in C.C. No.251 of 2015 pending on the file of XIV Special Magistrate, Erramanzil, Hyderabad, for the offence punishable under Section 138 of Negotiable Instrument Act, 1881 on various grounds that the petitioner was only an attestor of MOU and he issued the cheque in the name of Bureau of Quality Control Management, not to the second respondent, and that the petitioner is not liable to pay any amount legally to the second respondent, thereby in the absence subsisting legally enforceable debt, the complaint is not maintainable and prayed to quash the proceedings in CC. No.251 of 2015.

Sri Pratap Narayan Sanghi, learned counsel for the petitioner, while reiterating the contentions urged in the petition, contended that the cheque was not issued in favour of the second respondent, but in favour of Bureau of Quality Control Management. The said complaint was filed by the second respondent in his individual capacity. Therefore, the complaint in the CC is not maintainable and apart from that the petitioner being an attestor of MOU cannot become guarantor for payment of debt due by N.B.Ramaiah, who is the alleged principal debtor, and when CC No.253 of 2014 filed by Kaushal Kishore, it was dismissed by Judgment dated 12.01.2015. The

- 2 -

respondent is not entitled to file the complaint before the court and prayed to quash the same.

Whereas Sri P.Ganga Rami Reddy, learned counsel for the second respondent, contended that the complaint was filed against the petitioner on the ground that he issued a cheque only to discharge debt due by N.B. Ramaiah, as guarantor and the contractual relationship of the creditor, debtor and guarantor is to be decided during trial only and at this stage the complaint cannot be quashed, since it is a disputed question of fact.

As seen from the material on record, the specific allegation made at paragraph 1 of the complaint is that the petitioner being guarantor issued a cheque bearing No.001177 dated 23.10.2013 drawn on City Union Bank, Secunderabad Branch. Thus, the contractual status of the petitioner is guarantor, whose liability is coextensive with that of the principle debtor as per Section 128 of Indian Contract Act, 1872.

Therefore, if there is existence relationship of creditor, guarantor and principal debtor, issuance of a cheque to discharge the liability of the principal debtor is said to be issued, to discharge legally enforceable debt.

In any view of the matter, question of deciding contractual relationship of creditor, guarantor and principal debtor is the matter of evidence, and such disputed question of fact is decided only during trial and not in a petition filed under Section 482 Cr.P.C.

- 3 -

Hence, I am not in agreement with the contention of the counsel to the petitioner in this regard and hence on this ground the complaint cannot be quashed.

The second ground urged by the petitioner is that the cheque was admittedly issued by him in favour of Bureau of Quality Control Management and drawn the attention of this Court to the cheque dated 23.10.2013 and it was admittedly issued in favour of Bureau of Quality Control Management duly signed by Ashish Kumar Agarwal, the petitioner herein.

The second respondent is only Proprietor of Bureau of Quality Control Management, therefore, the complaint cannot be said to be bad on this ground alone.

Added to that, the petitioner filed several Miscellaneous Petitions before the trial court including the petition in CrI.M.P. No.382 of 2016 in CC No.251 of 2015 before the XIV Special Magistrate, Erramanzil, Hyderabad, under Section 203 read with 251 Cr.P.C. to dismiss the complaint and recall the summons issued against the petitioner. But the learned Magistrate dismissed the petition by Order dated 09.09.2016 holding that it is not an appropriate stage to acquit the petitioner, since the trial is commenced and P.W.1 was examined in part.

Aggrieved by the said order, no revision is preferred till date and in the absence of challenge to the order, based on the same ground, this criminal petition cannot be allowed by exercising jurisdiction under Section 482 Cr.P.C. It is left open to the petitioner to raise this contention before the trial court and I need not record any finding on this aspect.

- 4 -

The third ground raised before this Court is that the complaint filed against Sri N.B. Ramaiah is ended in dismissal by Calendar and Judgment dated 12.01.2015 in CC No.253 of 2014 acquitting the said N.B. Ramaiah for the offence punishable under Section 138 NI Act recording the ground that the said N.B. Ramaiah is no way concern with Bureau of Quality Control Management, but the said Judgment will have no bearing on the issue involved in this matter.

Hence, on this ground, the proceedings in the CC cannot be quashed. It is left open to the petitioner to raise all legal contentions permissible under law before the trial court or by filing revision petition before the competent authority against the order in CrI.M.P. No.382 of 2016 in CC No.251 of 2015.

With the above observation, the criminal petition is disposed of. However, it is made clear that the observations hereinabove will have no bearing on the decision in the CC and the learned Magistrate is directed to decide the CC uninfluenced by the observation hereinabove.

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

M. SATYANARAYANA MURTHY, J

Date: 09.11.2016
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