

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.16598 of 2016

ORDER:

This petition, under Section 482 Cr.P.C., is filed to quash the proceedings in C.C.No.691 of 2016 on the file of III Metropolitan Magistrate at Vijayawada, Krishna District for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short 'the Act').

Respondent filed a complaint under Sections 190 and 200 Cr.P.C, for the offences punishable under Sections 138 and 142 of Negotiable Instruments Act, alleging that cheque issued by the petitioner was dishonoured on its presentation and, on issue of notices, the petitioner did not comply with the demand notice issued under Section 138 (b) of the Act for payment of the debt due.

The present complaint is filed to quash the proceedings on four grounds. The first ground is that the petitioner discharged the entire debt long back with interest at 48% though the agreed rate of interest was 12%; the respondent obtained blank signed promissory notes at the time of advancing loan and mis-used those documents and filed the present complaint; and, therefore, the respondent is not entitled to any relief in the complaint and filing such a complaint is an abuse of process of Court.

Learned counsel for the petitioner vehemently argued the matter for some time and when the Court is not inclined

to grant an order after partly dictating the order, learned counsel made a request to transfer the matter to any other Court but such a practice cannot be allowed as it is nothing but a bench hunting or shopping. When the Court is not inclined to grant an order in favour of the petitioner, since no substance is found, the advocate is not supposed to make a request for transfer of the matter but the reasons behind making such a request are not known to this Court. When the bench is not inclined to grant a favourable order, making a request to post before another bench or withdrawing should not be allowed as it amounts to bench hunting (Vide: **Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior**¹ and **Sarva Shramik Sanghatana v. State of Maharashtra**²). However, I am not inclined to transfer the matter to any other Court.

The main ground urged before this Court is that the petitioner discharged his debt long back and drew the attention of this Court to registered notice dated 17.11.2016 issued by Sri P.Venkatappaiah, B.Com, B.L, wherein it was contended that the petitioner discharged the debt by paying Rs.12.00 lakhs on 18.04.2013; Rs.10.00 lakhs on 10.03.2014; Rs.10.00 lakhs on 10.03.2014; and Rs.12.50 lakhs on 03.12.2014 together with interest due to the respondent as on that day and informed not to resort to any litigation. This admission, in the notice, would suffice that the

¹ AIR 1987 SC 88

² AIR 2008 SC 946

petitioner borrowed amount from the respondent. Therefore, there is legally enforceable debt until it is proved that the petitioner discharged the debt in total.

The other ground urged before this Court is that the respondent obtained blank signed promissory notes and misused them and filed the present case. Admittedly, the petitioner borrowed certain amount from the respondent and the same is evidenced by notice dated 17.11.2016. Discharge of debt is a disputed question of fact but this Court cannot decide disputed question of fact while exercising power under Section 482 Cr.P.C. Moreover, the admission of issuing cheque and handing over blank signed promissory notes go to show that cheque was issued by the petitioner to the respondent and that there is a presumption under Section 139 of the Act that cheque was issued towards discharge of legally enforceable debt. Presumption under Section 139 of the Act is a rebuttable presumption. The initial onus is on the drawee to rebut the legal presumption by eliciting something in the cross-examination of prosecution witnesses or by adducing independent witnesses until it is rebutted. Legal presumption is in favour of the respondent that the cheque was issued towards legally enforceable debt of the complainant. Dispelling legal presumption would arise, only after adducing evidence by complainant and the accused (respondent and petitioner herein) but, at this stage, this Court cannot conclude that cheques were not issued towards

legally enforceable debt in view of the legal presumption under Section 139 of the Act. Similar question came up before the Supreme Court in **Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.**³, wherein the Supreme Court while deciding a similar case concluded that this Court, at best, advert to the material on record. To conclude whether the allegations made in the complaint would constitute an offence or not, prima facie if not, the Court can exercise its power under Section 482 Cr.P.C and quash the proceedings. The disputed questions of fact cannot be gone into while deciding the proceedings under Section 482 Cr.P.C. Therefore, the principle laid down by Apex Court is straight away applicable to the facts of the present case and, by applying the same, the present petition is liable to be dismissed.

Even otherwise, this Court can exercise power under Section 482 Cr.P.C. in exceptional circumstances and sparingly. The Supreme Court in **State of Haryana v. Bhajan Lal**⁴ laid down seven guidelines which are 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 accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- 2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.

³ AIR 2016 SC 4363

⁴ AIR 1992 SC 604

- 3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- 4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S.155(2) of the Code.
- 5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- 6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the agrieved party.
- 7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Even according to guideline No.1, if the allegations made in the First Information Report or the complaint are taken on their face value, taking it in its entirety would not disclose any offence, *prima facie*, the Court cannot exercise power under Section 482 Cr.P.C. to quash the proceedings. Similarly, as per guideline Nos.5 and 7, where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused; and where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior

motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the Court can exercise jurisdiction. But, here there is nothing on record to show that the respondent abused the process of Court to wreak vengeance.

Even if the principles laid down in **Bhajan Lal** (2 supra) are applied, I find no merit in the petition. On the other hand, the counsel for the petitioner made an attempt to resort to bench hunting/shopping which the Courts would not encourage. If such a practice is allowed, it would crumble the confidence of the public on the judicial institution. Therefore, I am not inclined to entertain such request.

In view of my foregoing discussion, I find no ground to quash C.C.No.691 of 2016.

In the result, the Criminal Petition is dismissed at the admission stage. Miscellaneous petitions pending, if any, shall stand dismissed.

M.SATYANARAYANA MURTHY,J

Date:07.12.2016
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