

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.13381 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in C.F.R.No.460 of 2016 (C.C.No.460 of 2016) on the file of I Addl. Judicial Magistrate of I Class, Kadapa District, for the offence punishable under Section 138 of Negotiable Instruments Act, on the following grounds.

1. On the alleged date of borrowing of Rs.25,00,000/- on 18.10.2013 and 26.10.2013, the petitioner/accused was at Hyderabad and no transaction took place between the petitioner and Reddy community people who are residing at Kakinada and moreover, it is alleged that they forcibly collected cheques from the petitioner in the year 2011.
2. The petitioner submitted an application on 03.01.2013 to the Kotak Mahindra Bank, West Godavari Bank to protect and safeguard his interest and requested the bank to close his savings bank account and he also submitted an application to the bank to stop payment of cheques bearing different numbers, including the cheque which is the subject matter of the present matter. Therefore, the account was closed much prior to the alleged issue of the cheque and consequently the complaint is not maintainable.

3. The third ground is that the debt allegedly payable by the petitioner is not enforceable under law and therefore issue of any unenforceable cheque is illegal and the same is not maintainable.

Learned counsel for the petitioner while reiterating the contentions stated in the affidavit, drawn the attention of this Court to the savings bank account of the petitioner with Kotak Mahindra Bank Limited, LCC Department, Kakinada Branch, Temple Street, Kakinada (formerly ING Vysya Bank limited) to show that the account was closed long prior to the alleged issue of cheques. It is stated that the alleged cheques were forcibly taken away from the petitioner by anti social elements and thereby those cheques cannot be treated as issued, in lieu of discharge of legally enforceable debt and prayed to quash the proceedings.

Learned counsel for the respondent while contending that the respondent is entitled to prosecute the proceedings both under Indian Penal Code and Negotiable Instruments Act. it is alleged that the petitioner cheated the respondent by issuing cheques after closing the savings bank account of the petitioner, so the respondent filed complaint for the offence punishable under Section 420 and also entitled to proceed under Section 138 of Negotiable Instruments Act for dishonour of cheques in view of closure of the account which was issued in lieu of discharge of debt due under promissory notes.

Apart from that the plea of absence, i.e. elibi is a matter of proof during evidence and as long as the debt is subsisting and enforceable under law, the complaint cannot be quashed at the threshold.

The first contention is that on the date of alleged execution of promissory notes i.e. on 18.10.2013 and 26.10.2013, the petitioner was at Hyderabad and there is no scope for borrowing the amounts at Kakinada from Reddy Community people. This contention is based on Section 11 of Indian Evidence Act and the burden heavily lies on the person who has set up the plea of elibi and such question cannot be decided at the threshold, since it is a question of fact to be decided during trial. Therefore, on this ground, the complaint cannot be quashed by exercising jurisdiction under Section 482 of Code of Criminal Procedure Code.

The other contention of the petitioner is that the cheques were forcibly taken away by anti social elements and taking advantage of those cheques, the complaint was filed though the savings bank account was closed. As seen from the account copy, the savings bank account of the petitioner with Kotak Mahindra bank which was closed on 03.01.2012, but the cheque bearing No.078163 was issued on 29.04.2016. Therefore, the cheques were allegedly issued atleast after four years from the date of after closing the account in the bank and

more curiously, the petitioner submitted a letter to the bank on 27.10.2011 requesting to stop payment and the present cheque i.e. 1078163 is the subject matter of the complaint and this fact is disputed by the learned counsel for the respondent/defacto complainant herein.

Even assuming for a moment that the cheques were issued on 29.04.2016, after closure of the account on 03.01.2012, it would attract an offence punishable under Section 420, which is the subject matter of Crime No.200 of 2016 on the file of I Town Police Station, Chinna Chowk, Kadapa. But, whereas, the present complaint is filed on the basis of dishonour of cheques issued in lieu of discharge of debt under two promissory notes. But, on verification of the cheque dated 29.04.2016, the cheque bears No.078163 but the cheque at serial no.38 in the letter dated 27.10.2011 bears the No.1078163. Therefore, cheque referred in the letter is distinct from the cheque issued in lieu of discharge of debt due under the promissory note. In those circumstances, by exercising jurisdiction under Section 482 of Cr.P.C, the proceedings in C.C.No.460 of 2016 cannot be quashed, since several disputed facts are required to be decided only during trial.

So far as enforceable debt is concerned, there is presumption under Section 118 of Negotiable Instruments Act, which permits the Court to draw a statutory presumption that the promissory note is supported by consideration and similarly

there is a presumption under Section 139 of Negotiable Instruments Act that, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, or any debt or other liability.

Therefore, right now, this Court can draw a presumption such presumption can be rebutted by adducing evidence during trial alone. Therefore, I find no ground to quash the proceedings at the threshold, since the allegations made in the complaint on its face value would constitute an offence punishable under Section 138 of Negotiable Instruments Act. Therefore, the petition is liable to be dismissed on this ground.

One of the contentions raised before this Court during hearing is that the respondent filed a different complaint for the offences punishable under Section 420 of I.P.C, which is registered as case in Crime No.200 of 2016 on the file of I Town Police Station, Chinna Chowk, Kadapa whereas, the complaint under Section 138 is filed before I Additional Judicial I Class Magistrate for the offences punishable under Section 138, suppressing the factum of filing complaint under Section 420.

Whereas, learned counsel for the respondent would contend that those two complaints are filed on the same day before the same Court, but this question is not relevant for deciding the present controversy under Section 482 of Cr.P.C.

Hence, no finding need be recorded with regard to suppression of fact leaving it open to the petitioner to raise such plea before the Trial Court, if permissible.

In view of my foregoing discussion, I find no ground to quash the proceedings in C.C.No.460 of 2016.

In the result, the criminal petition is dismissed.

Consequently, miscellaneous petitions, if any, pending in this criminal petition, shall stand dismissed. No costs.

Date:09.11.2016
SP

M. SATYANARAYANA MURTHY, J

