

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 6330 OF 2017

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') to quash the proceedings in C.C.No. 250 of 2017 on the file of the Court of XXI Special Magistrate, Hyderabad at Erramanzil (for short, 'the Court below').

2. The petitioner is the accused in the abovementioned C.C. for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act'), and the present petition is filed to quash the proceedings on the ground that there is material alteration in the cheque issued by the petitioner in favour of respondent No. 1 for Rs.50,00,000/- which is the basis for filing the complaint.

3. Learned counsel for the petitioner has drawn the attention of this Court to the alleged material alteration in the date column of the cheque and the stamps dated 02-06-2015 and 25-06-2015 of Andhra Bank, Somajiguda Branch, Hyderabad, to contend that when the cheque is materially altered, proceedings are liable to be quashed.

4. Date column is the material part of a negotiable instrument. Section 87 of the Act deals with the effect of material alteration. According to it, any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties. If alteration is made, the person, who is in possession of the instrument, has to prove that it is not materially altered or altered with the

consent of the drawer or altered before signing by the drawer. Moreover, it is brought to the notice of this Court that entire trial is completed and the case is coming up for arguments on 18-12-2017. When the burden of proof squarely lies on the holder of the negotiable instrument, which is a question of fact, such a disputed question of fact cannot be decided in the proceedings under Section 482 Cr.P.C. Consequently, the petition is liable to be dismissed.

5. The criminal petition is accordingly dismissed at the stage of admission. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 12-12-2017.
JSK

M.SATYANARAYANA MURTHY, J.

