

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.2946 of 2011

ORDER

This petition under Section 482 Cr.P.C., is filed by accused-Kandi Sailu to quash the proceedings in C.C.No.448 of 2008 on the file of Judicial Magistrate of First Class, Shadnagar, registered for the offence punishable under Section 138 of Negotiable Instruments Act, 1988 (for short 'the Act').

2. The main contention of petitioner before this Court is that the cheques were not allegedly issued towards discharge of either in whole or in part of legally enforceable liability as he was not the purchaser of the property, but the property was purchased by three persons, namely, M. Laxmaiah, Hussain Bin Syed and Shaik Anwar Pasha from K. Ram Reddy-complainant, K. Radhamma and K. Chinna Reddy and the petitioner was allegedly issued four cheques bearing No.0356466 dated 24.04.2008, bearing No.0356467, dated 25.04.2008; bearing No.0356468 dated 26.04.2008 and bearing No.0356469 dated 27.04.2008 for Rs.5,00,000/-each towards part of sale consideration. When the complainant presented those cheques for collection, they were dishonoured due to insufficiency of funds along with return memo, and after following necessary procedure, the first respondent filed complaint under Section 200 of Cr.P.C. for the offence punishable under Section 138 of the Act.

3. Notice was served on the first respondent, but none appeared on his behalf.

4. During hearing, Sri V. Hanmanth Rao, learned counsel for petitioner, contended that there was no legally enforceable liability as the contract was between M. Laxmaiah and two others and K. Ram Reddy and two others on 24.03.2008 for a total consideration of Rs.1,15,50,000/- and the purchasers paid advance of Rs.20 lakhs while agreeing to pay the balance of Rs.95,50,000/- within ninety days from the date of agreement by incorporating usual terms in the agreement. Therefore, the cheques referred in the complaint were not issued by petitioner towards discharge of legally enforceable debt and there was no relationship of creditor and debtor and that the dishonour of those cheques on presentation for collection would not constitute an offence punishable under Section 138 of the Act.

5. The complaint is based on the dishonour of four cheques referred to above and the first respondent allegedly issued a notice dated 29.07.2008 to the petitioner/accused-Kandi Sailu, M. Laxmaiah, Hussain Bin Syed and Shaik Anwar Pasha. The addressee Nos.2 to 4 are the purchasers under agreement of sale, but the accused-Kandi Sailu is no way concerned with the agreement. The entire reference in the notice is regarding the agreement and payment of advance sale consideration of Rs.20,00,000/- by way of four cheques and finally, the complainant called upon addressee Nos. 2 to 4, who are the purchasers under the agreement of sale dated 24.03.2008, that the agreement of sale stands cancelled automatically by 24.06.2008 as they failed to pay the balance of sale consideration within the time prescribed under

the agreement i.e., 90 days. It is further alleged that the advance amount paid by the purchasers through cheques would be forfeitted and threatened to initiate legal action against the petitioner herein both in civil and criminal Courts for issuing cheques with dishonest intention without sufficient funds to the credit of his account.

6. The contention of petitioner before this Court is that the cheques were not issued by him to the complainant, but issued to M. Laxmaiah, who is the first purchaser under agreement of sale, and said Laxmaiah, without the consent of petitioner, handed over the cheques to the complainant-K. Ram Reddy, who in turn filled the blanks in the cheques for presentation in the Bank for collection, thereby he became a holder of the instrument under Section 8 of the Act. Undisputedly, the contention of the petitioner is that he handed over signed blank cheques to M. Laxmaiah, who in turn handed over those cheques to the complainant towards advance of sale consideration and thereby he became a holder of the instrument, but the petitioner had no liability to pay advance sale consideration as on the date of execution of the agreement of sale dated 24.03.2008. Therefore, presumption under Section 139 of the Act will not apply to the present facts of the case and even otherwise, the allegations made in the notice and complaint are suffice to rebut the presumption that the cheques were issued towards part or whole of the legally enforceable liability. In such case, the proceedings under Section 138 of the Act cannot be continued.

7. It is also contended by learned counsel for petitioner Sri V. Hanmanth Rao, that no demand was made as required under Section 138 proviso (b) of the Act. The demand made in the notice dated 29.07.2008 is extracted hereunder:

"In the above said circumstances, I hereby call upon and intimate you addressee Nos.2 to 4 that the agreement of sale dated 24.03.2008 took place in between you and my clients with respect of above lands is automatically cancelled on 24th day of June, 2008 when you all failed in payment of balance sale consideration within the time limit prescribed in the agreement and when the prescribed period of ninety days for agreement of sale is completed and the advance amount which paid by you all through a cheque bearing No.0356466 dated 24.04.2008 is forfeited by my clients. Therefore, you are instructed to return the original title deeds and pattadar passbooks of my clients (under registered post with acknowledgment due) which were obtained by you all on the date of agreement immediately on receipt of this notice. Further my clients are constrained to initiate necessary legal proceedings into the matter against you addressee No.1 both civil and criminal manners for issuance of cheques with dishonest intention and without sufficient funds in the concerned account within a fortnight and in such event you addressee No.1 will be held responsible for all the costs and consequences arising there from. Hence this notice".

8. A bare look at the demand made by the first respondent in the notice dated 29.07.2008 would reveal that there is no specific demand calling upon the petitioner to pay the amount covered by the dishonoured cheques, which is sine qua non to make a complaint under Section 138 proviso (b) of the Act, and in the absence of any demand for payment of amount as required under Section 138 proviso (b) of the Act, the complaint is not maintainable. Therefore, on account of absence of any legally enforceable liability between the petitioner and the complainant, who is the first vendor under the agreement of sale, and failure to comply with the mandatory requirement under Section 138 proviso (b) of the Act, the

proceedings in C.C.No.448 of 2008 on the file of Judicial Magistrate of First Class, Shadnagar, shall not be continued and it is nothing but an abuse of process of law. Therefore, this Court can exercise its inherent power to quash the proceedings in view of the principles laid down by the Apex Court in **State of Haryana v. Bhajanlal**¹ in guideline Nos.1, 6 and 7.

9. Hence, the Criminal Petition is allowed, quashing the proceedings in C.C.No.448 of 2008 on the file of Judicial Magistrate of First Class at Shadnagar, against the petitioner/accused. Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

6th April, 2017
sj

M. SATYANARAYANA MURTHY, J

¹ 1992(1) SCC 335