

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.17370 OF 2016

ORDER:

This Criminal Petition is filed under Section 482 of Cr.P.C. to quash the proceedings in C.C.No.199 of 2015 pending on the file of Principal Junior Civil Judge at Narsapur, West Godavari District, for the offence punishable under Section 138 of the Negotiable Instruments Act.

Petitioner herein is the accused and 2nd respondent herein is the defacto complainant.

2nd respondent-defacto complainant filed a complaint against the petitioner-accused for the offence punishable under Section 138 of Negotiable Instruments Act and under Section 420 of I.P.C., alleging that the petitioner-accused borrowed an amount of Rs.8,00,000/-for his family necessity and for investing the same in the business and in this connection, he executed a promissory note on the same day and agreeing to repay the same with interest at 24% p.a, either to the 2nd respondent or to his order as and when demanded. The petitioner issued a cheque for Rs.1,00,000/- to discharge part of the debt due under demand promissory note dated 2-8-2013 and made the complainant to believe him and his representation.

Later on, check was presented for collection in State Bank of India, Narsapur Branch for clearance but the cheque was returned with endorsement "Insufficient funds". Thereupon, a notice dated

4-5-2015 was issued to the petitioner calling upon him to pay cheque amount for which no reply was given and not paid the amount covered by cheque. Hence, he filed complaint against the petitioner.

The first and foremost ground urged before this court during hearing is that the notice dated 4-5-2015 is not in dispute. The 2nd respondent made certain corrections in the notice regarding time fixed for payment and bank name.

During hearing, learned counsel for the petitioner reiterated the above grounds.

According to Section 138 of the Negotiable Instruments Act, under proviso 'C', 15 days prior notice is required to be issued which is precondition for filing a petition under Section 138 of the Negotiable Instruments Act and a copy of the notice filed before the trial Court dated 4-5-2015 is produced before this court which shows at second line of it at para 6 to the effect that the 2nd respondent gave 15 days clear notice demanding the petitioner to pay the amount and there is also a correction in para No.3 as "State Bank of Bank Main Branch at Narsapur" by the counsel and the corrections are initiated by the counsel. He also produced a demand notice allegedly issued by the 2nd respondent dated 4-5-2015 where there are no corrections carried out both in para No.3 and para No.6 of the notice but the 2nd respondent issued a seven days clear notice which is contrary to the provisions of Section 138 proviso 'C' of the said Act. Whether the petitioner carried out

corrections in registered notice issued to the petitioner or whether 15 days time is granted for payment of the amount is a disputed question of fact. The petitioner himself produced two notices before this court and even in the complaint also, there is no specific allegation in para 6 of another copy of notice where second respondent granted 15 days time to pay the amount. All these questions can be decided only during trial but not at this stage of proceedings, and apart from that, this court cannot place reliance on either of the notices to quash the proceedings while exercising jurisdiction under Section 482 Cr.P.C. *SAMPELLE SATYANARAYANA RAO Vs. INDIAN RENEWABLE ENERGY DEVELOPMENT AGENCY LIMITED* (¹), the apex court clearly held that the disputed questions cannot be gone into while deciding application filed under Section 482 of Cr.P.C.

In view of the law declared by the apex court, leaving it open to the petitioner to raise all these contentions before the court below regarding identity of notice in compliance of Section 138 of the Negotiable Instruments Act.

Learned counsel for the petitioner requested this court to dispense with the presence of the petitioner before the court below on each and every date of adjournment. But, I am not inclined to accede to such request, since it is for the trial court to decide this aspect according to its convenience and pass appropriate orders if any application is filed and on filing such application, the trial court

¹ AIR 2016 SC 4363

is directed to pass appropriate orders on the day, the application is filed.

With the above observation, this Criminal Petition is dismissed.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 3-1-2017.

Dvs.



HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 3-1-2017

Dvs