HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL APPEAL M.P.NO.2158 OF 2016

IN/AND

CRIMINAL APPEAL NO.1221 OF 2016

COMMON ORDER:

Criminal Appeal No.1221 of 2016 is filed to challenging the calendar and judgment dt. 18.06.2014 in C.C.No.375 of 2013 passed by VIII Special Magistrate, L.B.Nagar, Hastinapur, Ranga Reddy District.

Crl.A.M.P.No.2158 of 2016 is filed under Section 378(4) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C'). to grant special leave to prefer an appeal against the order of acquittal dated 18.06.2014 passed in C.C.No.375 of 2013 by the Special Magistrate, L.B.Nagar at Hastinapur, R.R. District.

The petitioner herein filed a private complaint under Section 200 Cr.P.C. for the offence punishable under Section 138 of NI Act. After full-fledged trail, the trial Court acquitted the respondent No.2 finding him not guilty.

Aggrieved by the calendar and judgment in C.C.No.375 of 2013 acquitting the respondent No.2, the present appeal is preferred.

The trial Court, while acquitting the respondent No.2, recorded a finding that the petitioner is a money lender as defined under Section 2 (7) of AP (Telangana Area) Money Lenders Act, No.V of

1349 Fasli and the person who carries the said business is required to obtain licence and when the petitioner did not obtain any license, the debt, if any, is not legally enforceable debt and relying on a judgment in **M/s Krishnam Raju Finances v. A. Suslana and another (2004) 1 ALTT (Crl) 474,** wherein, while dealing with a case for an offence punishable under Section 138 of NI Act it was held that the liability, if any, due to the money lender within the Telangana Area without license is not legally enforceable debt and thereby he is not entitled to recover the amount and the cheque issued towards discharge of such debt cannot be held to be a legally enforceable debt and thereby acquitted the respondent finding him not guilty.

This Court cannot pass a cryptic order on mere urging or pleading in a petition for special leave. The Court has to consider whether there are any grounds to grant special leave and record reasons for grant of such leave.

Even in the earlier occasion, this Court has considered the aspect of validity of legally enforceable obligation of contract between the financier, who is a money lender, under Section 2(7) of A.P (Telangana Area) Money Lenders Act, 1349 Fasli and held that he is not entitled to recover the amount. Similarly, in **Baba Finance Corporation v. Mohd. Nayeem and another (1997) 1 ALD (Crl) 719**, this Court took a view that if it is proved that the plaintiff is a money lender as defined under the Act (AP (TA) Money Lenders Act) and if he does not possess licence, the Court shall dismiss his suit. In other words, such a money lender cannot claim debt or liability from other or from his debtors, without valid money lending licence. The explanation to Section 138 of N.I. Act further provides that the dishonoured cheque shall relate to a debt or liability enforceable in order to constitute an offence".

This Court, again in **Krishnam Raju Fiances, Hyderabad v. Abida Sultana and another (2004(1) ALD (Crl) 546 (AP)** reiterated the same principle.

Thus, in view of the law declared in the above cited judgments, unless the petitioner/appellants holds licence to carry on money lending business and he falls under the definition of 'money lender' under Section 2 (7) of AP (TA) Money Lenders Act, he is not entitled to recover the amount, in view of Section 9 of the Act.

According to Section 9 of the Act, notwithstanding anything contained in any law for the time being in force in every suit relating to a loan:

> (1) The Court shall frame and decide the issues whether the money lender is a money lender as defined in sub section (7) of Section 2, and whether he has complied with the provisions of (Section 3) and of Clauses (a) and (b) of sub Section (1) of Section 5 and sub sections (1) and (2) of Section 6;
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> (2) If it is proved that the plaintiff is a money lender as defined in sub section (7) of Section 2, but does not hold a licence granted under Section 3, the Court shall dismiss his suit.

In the instant case, the learned counsel for petitioner contended that Section 9 of the Act is applicable to the suits relating to a loan, but not to the offences punishable under Section 138 of NI Act. No doubt, Section 9 of the Act relates to the suits, but however, the law declared by this Court in the above cited judgments is contrary to the contentions raised before this Court on behalf of the petitioner/accused and in view of explanation to Section 138 of NI Act since the above cited two judgments are passed by coordinate bench of this Court, this Court is bound to follow the guidelines while granting special leave and accordingly, this petition is liable to be dismissed.

In the result, Crl.A.M.P.No.2158 of 2016 is dismissed. Consequently, Crl.A.No.1221 of 2016 is rejected.

As a sequel, miscellaneous petitions, if any, pending in these cases, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 07-04-2017.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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