

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.6075 of 2014

ORDER

This petition under Section 482 Cr.P.C., is filed to quash the proceedings in C.C.No.223 of 2014 pending on the file of XII Special Magistrate, Hyderabad, registered for the offence punishable under Section 138 of Negotiable Instruments Act, 1988 (for short 'the Act'), against the petitioners/A3 to A6, based on the private complaint.

2. Respondent No.2 filed a private complaint against the petitioners and 2 others for the offence punishable under Section 138 of the Act styling A1 as Firm and the other accused are its partners and the said firm was carrying real estate business. During the course of business transactions, A1 issued a cheque bearing No.186190 dated 25.01.2014 for Rs.66,00,000/- in favour of the complainant with the consent and knowledge of the other accused. When the complainant presented the said cheque, it was dishonoured due to insufficiency of funds, as per cheque return memo dated 29.01.2014. Thereafter, the complainant issued legal notices dated 04.02.2014 to all the accused, but they were returned as 'refused' on 05.02.2014, thereby, the accused cheated the complainant by issuing the cheque without making arrangement for clearance.

3. The main contention before this Court is that these petitioners are not continuing as partners of A1 Firm i.e., M/s. Mahavir Constructions as it was dissolved long back and thereby, the

petitioners cannot be compelled to undergo trial for the offence punishable under Section 138 of the Act.

4. The counsel for petitioners filed a copy of Form-A issued by the Registrar of Firms, Hyderabad, under Section 59 of the Indian Partnership Act, 1932, stating that A1 Firm was dissolved w.e.f. 21.05.1997 and thereafter, the business is being continued as a sole proprietary concern and the 2nd respondent also obtained a sale deed from the Hyderabad Co-operative Central Trading Society Limited and M/s. Mahavir Constructions dated 20.02.2001 at Hyderabad, for the part of the property which the petitioners alleged purchased and it was executed by M/s.Mahavir Coshtuctions as a sole proprietary concern. But the 2nd respondent having knowledge that the Mahavir Constructions is the sole proprietary concern impleaded all these petitioners as accused for the offence punishable under Section 138 of the Act.

5. The 2nd respondent filed counter denying the material allegations, *inter alia*, contending that the petitioners are continuing as partners of the Firm and he produced a copy of Form-A certificate showing that the accused are the partners of the Firm M/s. Mahavir Constructions, which was constituted on 01.04.1988 and it is still continuing as partnership. A copy of the certificate issued by the Registrar of Firms is placed on record. Therefore, based on the lease deed and the lease declaration, he contended that the petitioners are the partners of M/s. Mahavir Constructions and they

are liable to be proceeded for the offence punishable under Section 138 of the Act.

6. There is no dispute regarding constitution of the Firm M/s.Mahavir Constructions on 01.04.1988 and continued its business till 21.05.1997. The partnership firm was dissolved as per Form-A certificate furnished by the counsel for petitioners. Therefore, the petitioners are not continuing as partners of the Firm M/s.Mahavir Constructions on the date of issuance of alleged cheque i.e., 25.01.2014, for Rs.66,00,000/-. Thus, the cause of action in the complaint was the date on which the time stipulated under Clause (b) of proviso to Section 138 of the Act and the same was expired in the month of February, 2014 i.e., after serving notice in compliance of Clause (b) of proviso to Section 138 of the Act. If all these documents are accepted on its face value, the petitioners were not partners as on the date of cause of action for filing the complaint for the offence punishable under Section 138 of the Act.

7. One of the strange contentions raised before this Court is that the transaction pertains to the partnership business before its dissolution, but there is no material to substantiate its contention. On the other hand, the cheque bearing No.186190 was issued on 25.01.2014 for Rs.66,00,000/-, which was returned on its presentation for collection, as unpaid and thereafter, issued a notice on 04.02.2014, but it was refused. Therefore, by the date of issuance of cheque by A1 represented by A2, these petitioners were not the partners of the Firm and when they are not partners, no

liability can be fastened against them for the offence punishable under Section 138 of the Act. Even according to Section 138 of the Act, the drawer or maker of the cheque, as defined under Section 7 of the Act, alone are responsible in the event of failure to pay the amount within the time stipulated under Clause (b) of Section 138 of the Act, after serving notice in compliance of said clause. As these petitioners are not drawers of the cheque, they are not liable to be proceeded for the offence punishable under Section 138 of the Act. Hence, I find that filing a private complaint against these petitioners for the offence punishable under Section 138 of the Act, is nothing but an abuse of process of the Court.

8. Under Section 482 of Cr.P.C., this Court can exercise its inherent jurisdiction to give effect to the orders passed by the Court to prevent an abuse of process of the Court and to secure the ends of justice. Keeping in view the scope of Section 482 of Cr.P.C., the Apex Court in **State of Haryana v. Bhajanlal**¹, laid down the following 7 guidelines, which are extracted hereunder:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code;

¹ 1992 Supp(1) SCC 335

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in [the Code](#) or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking [vengeance](#) on the accused and with a view to spite him due to private and personal grudge.

Even according to guideline Nos.2 and 3 of the said judgment, when the allegations in the complaint, if taken on its face value, would not constitute an offence, this Court can exercise its inherent jurisdiction to quash the proceedings against the petitioners. Therefore, by applying guideline Nos.2 and 3 issued by the Apex Court in **State of Haryana's** case, referred supra, I find that it is a fit case to quash the proceedings against the petitioners for the offence punishable under Section 138 of the Act.

9. In the result, the Criminal Petition is allowed, quashing the proceedings against the petitioners/A3 to A6 in C.C.No.223 of 2014 pending on the file of XII Special Magistrate, Hyderabad.

10. Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

15th December, 2017

sj
Issue CC by 20.12.2017

