

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.15581 OF 2016

ORDER:

1 This Petition, under Section 482 Cr.P.C, is filed seeking to quash the proceedings against the petitioner in C.C.No.364 of 2016 on the file of the Court of the III Special Magistrate, Kukatpally, Cyberabad.

2 The facts leading to filing of the present Criminal Petition are, briefly, as follows:

3 The case of the complainant - second respondent is that the petitioner herein entered into a development agreement with the father of the second respondent on 07.04.2014 for development of the plot in R.S.No.18/2, Siddarthanagar, Vijayawada. As per the terms and conditions of the development agreement, the petitioner has to pay an amount of Rs.10,00,000/- as part payment either to the second respondent or to his father. On 28.01.2016 the petitioner issued a cheque bearing No.308253 drawn on State Bank of India, Gurunanak branch, Vijayawada for an amount of Rs.7,50,000/- in favour of the second respondent. On 04.02.2016 the second respondent presented the said cheque for clearance in State Bank of India, Kukatpally branch, Hyderabad. The bank authorities returned the cheque with an endorsement 'funds insufficient'. The second respondent got issued a legal notice on 16.2.2016 directing the petitioner to pay the amount covered under the said cheque. Hence the complaint.

4 The learned counsel for the petitioner submitted that the second respondent is not a party to the development agreement, therefore, the cheque alleged to have been issued by the petitioner would not create any legal right in favour of the second respondent. He further submitted that the cheque in question is not legally enforceable, therefore, it is a fit case to quash the criminal proceedings against the petitioner.

5 *Per contra*, the learned counsel for the second respondent submitted that whether the debt in question is legally enforceable or not is purely a disputed question of fact, which cannot be gone into at this stage and hence the present petition is liable to be dismissed.

6 To substantiate the arguments, the learned counsel for the petitioner has drawn the attention of this Court to the following decisions:

Roy V.D. vs. State of Kerala¹ wherein the Hon'ble apex Court held at para No.18 as follows:

18. It is well settled that the power under Section 482 of the Cr. P.C. has to be exercised by the High Court, inter alia, to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence bases on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under Section 482 of the Cr. P.C. to quash proceedings in a case like the one on hand, would indeed secure the ends of justice.

¹ (2000) 8 SCC 590

Manoj Mahavir Prasad Khaitan vs. Ram Gopal

Poddar² wherein the Hon'ble apex Court held at para No.12 as follows:

12. We reiterate that when the criminal Court looks into the complaint, it has to do so with the open mind. True it is that that is not the stage for finding out the truth or otherwise in the allegations; but where the allegations themselves are so absurd that no reasonable man would accept the same, the High Court could not have thrown its arms in the air and expressed its inability to do anything in the matter. Section 482 Cr.P.C. is a guarantee against injustice. The High Court is invested with the tremendous powers thereunder to pass any order in the interest of justice. Therefore, this would have been a proper case for the High Court to look into the allegations with the openness and then to decide whether to pass any order in the interests of justice. In our opinion, this was a case where the High Court ought to have used its powers under Section 482 Cr.P.C.

Satish Mehra vs. State of N.C.T. of Delhi³ wherein the

Hon'ble apex Court held at para No.21 as follows:

21. A criminal trial cannot be allowed to assume the character of fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused. We are, therefore, of the view that the criminal proceeding in the present form and on the allegations levelled is clearly not maintainable against either of the accused - Appellant G.K. Bhat and R.K. Arora.

7 As per the principle laid down in the above cases, the court can quash the criminal proceedings while exercising jurisdiction under Section 482 Cr.P.C if the complaint does not disclose any offence.

² (2010) 10 SCC 673

³ (2012) 13 SCC 614

8 Per contra, the learned counsel for the second respondent has drawn the attention of this court to the following judgments:

S. Krishnamoorthy vs. Chellammal⁴ wherein the Hon'ble apex Court held at para Nos.5 to 7 held as follows:

5. The above defence of the Respondent (accused) before the High Court, in the petition filed Under Section 482 of the Code, is nothing but absolutely factual in nature, which is neither admitted by the complainant, nor apparent on the face of the record. Such type of disputed factual defences could have been appreciated only by the trial court, after the parties led their evidence. In our opinion, the High Court committed grave error of law in examining the allegations and counter allegations which are disputed and factual in nature in a proceeding Under Section 482 of the Code.

6. In Padal Venkata Rama Reddy alias Ramu v. Kovvuri Satyanarayana Reddy and Ors. (2011) 12 SCC 437, this Court, explaining the law on the scope of Section 482 of the Code, has observed, in paragraph 32, as under:

32. It would not be proper for the High Court to analyse the case of the complainant in the light of all the probabilities in order to determine whether conviction would be sustainable and on such premise arriving at a conclusion that the proceedings are to be quashed. In a proceeding instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case in which the complaint does not disclose any offence or is frivolous, vexatious or oppressive. There is no need to analyse each and every aspect meticulously before the trial to find out whether the case would end in conviction or acquittal.

7. In view of the above position of law, we have no option but to set aside the order passed by the High Court as it has entered into highly disputed questions of fact and concluded that the material before it was sufficient to cause reasonable suspicion in the case of the complainant. That is not the ground on which powers Under Section 482 of the Code can be exercised by the High Court.

9 As per the principle enunciated in the case cited supra, disputed questions of fact cannot be decided while exercising jurisdiction under Section 482 Cr.P.C.

⁴ 2015 (2) ALD (Cr1.) 593 (SC)

10 Let me consider the facts of the case on hand in the light of the above legal principle.

11 It is an admitted case that the petitioner entered into a development agreement with the father of the second respondent on 07.03.2014. As per the terms and conditions of the said development agreement, the petitioner has to pay an amount of Rs.30.00 lakhs. The petitioner paid an amount of Rs.5.00 lakhs to the second respondent and another sum of Rs.5.00 lakhs to the brother of the second respondent on 07.03.2014. As per the terms and conditions of the said agreement, the petitioner has to pay an amount of Rs.10.00 lakhs within three months and remaining amount of Rs.10.00 lakhs within nine months from the date of the agreement. Admittedly, the second respondent is not a party to the said development agreement dated 07.03.2014.

12 It is not in dispute that the second respondent presented the cheque issued by the petitioner for collection on 04.02.2016 and the same was returned with an endorsement 'funds insufficient'. On 16.2.2016 the second respondent got issued a legal notice to the petitioner directing him to pay the amount within 15 days from the date of receipt of the notice. The petitioner having received the notice on 20.02.2016, neither paid the money nor issued any reply. The second respondent, having no other alternative, filed the complaint under Section 200 Cr.P.C. against the petitioner for the offence punishable under Section 138 of N.I.Act. The learned Magistrate, after satisfying

himself with the material placed before him, has taken cognizance of the offence under Section 138 of N.I.Act and issued summons to the petitioner.

13 A perusal of the record clinchingly establishes that the second respondent has strictly adhered to the procedure as contemplated under Section 138 of N.I.Act. There is not procedural defect in filing of the complaint.

14 It is not the case of the petitioner that he has not issued the cheque bearing No.308253 in favour of the second respondent. For one reason or the other, the petitioner did not issue any reply to the notice got issued by the second respondent on 16.2.2016. It is needless to say that the court can draw a presumption that the cheque was issued in discharge of a legally enforceable debt in view of Section 139 of the N.I.Act unless and until the contrary is proved by the accused. The burden of proof lies on the petitioner to establish that the debt in question is not legally enforceable, having admitted the issuance of cheque.

15 In the instant case also, the various queries raised by the learned counsel for the petitioner involve complexity of disputed questions of fact. Whether the debt in question is legally enforceable or not is purely a disputed question of fact, which can be decided only after adducing oral and documentary evidence by both parties.

16 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am

of the considered view that this is not a fit case to quash the criminal proceedings against the petitioner while exercising jurisdiction under Section 482 Cr.P.C.

17 This Criminal Petition is accordingly dismissed. As a sequel, miscellaneous petitions, if any connected to this Criminal Petition, shall stand closed.

T. SUNIL CHOWDARY, J.

Date:30-06-2017.

Kvsn

