

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.1227 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioner/complainant assailing the order, dated 31.01.2017, of the learned Additional Junior Civil Judge-cum-Judicial Magistrate of First Class, Chirala, passed in CFR No.296 of 2017.

2. By the said order impugned in this revision, the learned Magistrate rejected the complaint filed by the petitioner/complainant holding *inter alia* that there is no *prima facie* case to take cognizance against the second respondent-accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'the Act').

3. I have heard the submissions of the learned counsel for the complainant/petitioner (hereinafter, 'complainant' for brevity) and of the learned Public Prosecutor appearing for the 1st respondent- State of Andhra Pradesh. Though the respondent No.2-accused was served with notice, she did not enter appearance and there is no representation on her behalf.

4. I have perused the material record.

5. The facts of the case, which lie in a narrow compass, are as follows:

The complainant filed a complaint against the accused alleging that the accused is liable to be punished for the offence punishable under Section 138 of the Act. The complainant also filed his sworn affidavit affirming the case pleaded in his complaint. A request was also made on his behalf by his learned counsel to take cognizance and register the complaint case in accordance with the procedure established by law. Further, the trial Court heard the

submissions of the learned counsel for the complainant and thereafter rejected the complaint without taking cognizance *inter alia* observing *verbatim* as follows:

‘.....the case of the complainant is, the accused and her daughter are tenants of the complainant and they fell due of rent to a tune of Rs.59,800/- as on 10.05.2016 and accordingly accused has issued a cheque in favour of the complainant for Rs.59,800/- towards arrears of rent, but the same was dishonoured and thereby, the accused is liable for punishment u/s 138 of N.I.Act. But on perusal of the material on record, the complainant has not filed any lease deed or rent deed and also did not mention atleast the door number of the house in which the accused and her daughter were residing. the complainant did not show the name of the daughter of the accused as party to this case. Apart from that on perusal of the alleged cheque filed along with the complaint, the daughter of the accused signed on the backside of the cheque by mentioning that the said cheque was issued for arrears of rent. I do not understand as to how the daughter of the accused is authorised to sign on the cheque of her mother and what is her capacity to do so. Furthermore, on perusal of the entire material on record, there is no prima facie case to attract the ingredients as required u/s 138 of N.I Act.’

6. Aggrieved of the said order of rejection of his complaint, the complainant is before this Court.

7. The learned counsel for the complainant would submit as follows: ‘The rejection of the complaint, in the facts and circumstances of the case, is illegal. A plain and careful perusal of the complaint, the sworn affidavit of the complainant and all the documents filed along with the complaint, particularly, the cheque with the endorsement on the reverse of it, make it manifest that the cheque was issued towards a legally enforceable debt viz., arrears of rent and that the said cheque was dishonoured for the reason ‘insufficient funds’ and that the complaint was filed after non compliance of the demand in the statutory notice. Hence, the trial Court ought to have entertained the complaint instead of rejecting the same. The trial Court ought to have seen that at the time

of taking cognizance, it has to examine the averments in the complaint and the contents of the sworn statement and of the material documents to find as to whether a *prima facie* case or a strong case exists for taking cognizance and issuance of summons to the accused after registering the calendar case. The learned Magistrate ought to have seen that the learned Magistrate is entitled and empowered to sift and weigh the evidence for the limited purpose of finding out as to whether or not a *prima facie* case has been made out for taking cognizance of the offence but the learned Magistrate is not entitled and not empowered to appreciate the evidence and conduct a roving enquiry. However, in the case on hand, the learned Magistrate committed a grave error in appreciating the evidence contrary to the settled legal position. Hence, the order impugned is liable to be set aside.'

8. As noted, the 2nd respondent did not enter appearance despite service of notice and is not resisting this revision case. I have bestowed my attention to the facts and submissions.

9. A plain and careful perusal of the complaint, the sworn statement of the complainant and the documents filed along with the complaint makes it manifest that the case of the complainant is that the cheque was issued towards arrears of rent by the accused, who along with her daughter was a tenant in the property of the complainant, and that the cheque, on presentation for collection, was dishonoured for the reason - 'insufficient funds' and that thereafter, the statutory notice was issued and the complaint was filed as the demand in the statutory notice was not complied with by the accused. As rightly pointed out by the learned counsel for the complainant, the endorsement on the reverse of the cheque discloses that the said cheque was issued towards arrears of rent. According to the case of the complainant, the said endorsement was made by the daughter of the accused. The learned Magistrate rejected the complaint

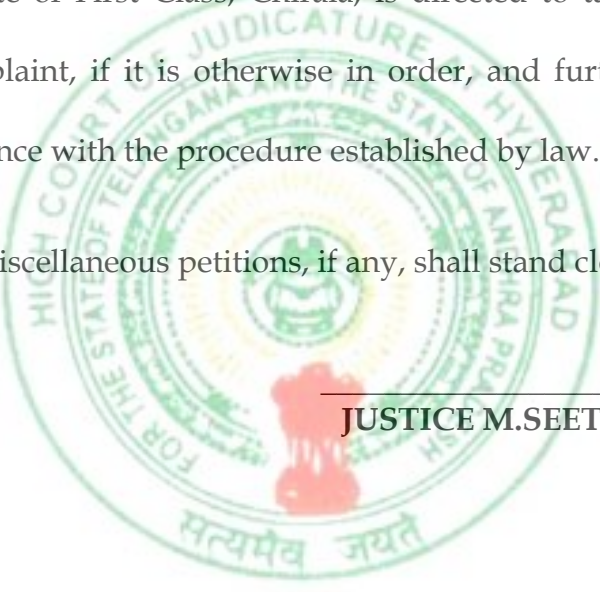
without taking cognizance for the following reasons: 'The lease deed or rent deed is not filed; The property details like house number are not mentioned in the complaint; Though the daughter of the accused also resided along with the accused in the rented house, the complaint was filed only against the accused; The learned Magistrate does not understand as to how the daughter of the accused is authorised to sign on the cheque of the accused and her capacity to do so.' The learned Magistrate was of the erroneous view that the daughter of the accused signed on the cheque while in fact the cheque was signed by the accused and an endorsement on the reverse of the cheque that it was issued towards arrears of rent was made by her daughter. The other reasons assigned in the impugned order are all matters of appreciation of evidence. Such appreciation may be necessary at the time of adjudication of the *lis*, after full fledged trial, but such appreciation of evidence and the other aspects that are mentioned in the impugned orders of the learned Magistrate are not germane for consideration at the time of considering the issues - 'whether or not cognizance shall be taken and whether or not the complaint should be entertained'. It is well settled that at the stage of taking cognizance or taking a calendar case on file, the Court is required to evaluate the material and documents on record in order to find out if the facts emerging therefrom taken at their facie value disclose the existence of all the ingredients constituting the alleged offence and the Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the complainant states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. Thus, at the inception or at the time of taking cognizance, there is no need to insist upon proof to the hilt.

10. On the above analysis, this Court finds that the learned Magistrate committed an error in appreciating the evidence and in making a roving enquiry at the time of taking cognizance and in rejecting the complaint even though a prima facie case is made out for taking cognizance and registering the complaint and issuing summons to the accused. Accordingly this Court holds that the order impugned is unsustainable under facts and in law and is liable to be set aside.

11. In the result, the Criminal Revision Case is allowed and the impugned order passed in CFR No.296 of 2017 is set aside and the learned Additional Judicial Magistrate of First Class, Chirala, is directed to take cognizance and register the complaint, if it is otherwise in order, and further proceed in the matter in accordance with the procedure established by law.

Pending miscellaneous petitions, if any, shall stand closed.

July 5, 2017
Lmv


JUSTICE M.SEETHARAMA MURTI