

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.8903 of 2017

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, ('the Code', for brevity) is filed by the petitioner/accused to quash the proceedings in C.C.No.42 of 2017 pending on the file of the I Additional Junior Civil Judge, Guntur, for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881 ('N.I. Act', for brevity).

2. The respondent/complainant filed the complaint against the petitioner/accused for the offences punishable under Sections 138 and 142 of the N.I.Act, alleging that the petitioner/accused borrowed the amount and issued a cheque towards the discharge of the legally enforceable debt and thereafter, when the said cheque was presented for collection, it was dishonoured, and later, in compliance of the requirements under Clause (b) of proviso to Section 138 of the N.I.Act, a notice, dated 11.08.2014, was issued, which was returned un-served on 22.08.2014, but the amount covered by the dishonoured cheque was not paid.

3. The main grounds urged before this Court in this Criminal Petition are two fold: (1) The petitioner/accused never issued any cheque towards discharge of any legally enforceable liability; and (2) the complaint is silent about the re-presentation of the cheque for collection on its dishonour once. Urging thus, it is contended that in the absence of any material before the Court regarding re-

presentation of the dishonoured cheque, the complaint is not maintainable.

4. During hearing, Sri Y.Narapa Reddy, learned counsel for the petitioner, mainly contended that the petitioner/accused never issued any cheque towards discharge of legally enforceable debt and when the cheque was returned with the endorsement that the cheque has to be re-presented for collection, in the absence of proof that the respondent/complainant re-presented the cheque and it was dishonoured on its re-presentation, the complaint is not maintainable.

5. The first contention regarding denial of issuance of cheque by the petitioner/accused to the respondent/complainant for discharging the legally enforceable debt is a question of fact and such a question of fact cannot be decided while exercising powers under Section 482 of the Code, i.e., 'inherent power'.

6. The second contention is that the cheque was returned with a cheque return memo, dated 14.07.2014, with an endorsement 'kindly contact drawer drawee bank and please present again'. Taking advantage of this endorsement, it is contended that the cheque has to be re-presented for collection after contacting the drawer bank. But this is not a ground to quash the proceedings, since the cheque was already presented once for collection by the respondent/complainant and it was dishonoured with a specific endorsement, the cause of action arose for complaint immediately after expiry of 15 days from the date of receipt of notice under clause (b) of explanation to Section 138 of the N.I.Act.

7. Moreover, in view of the presumption under Section 27 of the General Clauses Act, 1897, the notice was sent to the petitioner/accused by the respondent/complainant is deemed to have been served *prima facie*, as the petitioner did not deny the correct address mentioned in the registered notice.

8. Therefore, on any of these grounds, the proceedings in the Calendar Case cannot be quashed at this stage, consequently, I find no grounds to quash the proceedings in C.C.No.42 of 2017 pending on the file of the I Additional Junior Civil Judge, Guntur, by exercising inherent powers under Section 482 of the code. The Criminal Petition is de void of merit and is liable to be dismissed.

9. In the result, the Criminal Petition is dismissed at the stage of admission.

Pending miscellaneous petitions, if any, shall stand closed.

22nd September, 2017
Bvv

M.Satyanarayana Murthy, J