

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 8827 OF 2016

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.") to quash the proceedings in C.C.No. 146 of 2016 on the file of the Court of XII Additional Chief Metropolitan Magistrate, Nampally at Hyderabad (for short, 'the Court below').

2. Respondent No. 2 lodged a report with the police and after investigation, the police filed charge sheet against the petitioners for the offence punishable under Sections 406 and 420 read with Section 34 of the Indian Penal Code (for short, 'I.P.C.'). The allegation made against the petitioners is that they both issued cheques which were dishonoured on their presentation with the payee bank and that therefore the cheques were issued with intention to deceive respondent No. 2.

3. As seen from the material produced before this Court *i.e.* cheques allegedly issued by the petitioners, Beerla Amaravathi – petitioner No. 1 only signed on the cheques. Petitioner No. 2 was neither drawer nor maker of the cheques as defined under Section 7 of the Negotiable Instruments Act, 1881 (for short, 'the Act'). Thus, petitioner No. 2 did commit no offence for the offence punishable under Sections 406 and 420 read with Section 34 I.P.C. Petitioner No. 1 is wife of petitioner No. 2 who allegedly issued cheques in favour of respondent No. 2 and the cheques were dishonoured on their presentation with the payee bank for collection and that therefore the act of petitioner No. 1 in issuing the cheques knowing that she had no balance available to her credit constitutes the offence punishable under Sections 406 and 420 I.P.C. Learned

counsel for the petitioners contended that petitioner No. 1 herself permitted respondent No. 2 to fill up the blanks in the cheques and utilize the same. In such case, the documents are inchoate documents under Section 20 of the Act. The alleged issue of cheques by petitioner No. 1 without balance to her credit with knowledge constitutes the offence *prima facie* punishable under Sections 406 and 420 I.P.C. Therefore, I find no ground to quash the proceedings against petitioner No. 1 while finding no material to proceed against petitioner No. 2.

4. The powers of this Court under Section 482 Cr.P.C. are limited and this Court can exercise such powers only to implement the orders passed under the code or to prevent abuse of process of law or to meet the ends of justice. The Apex Court in ***State of Haryana Vs. Bhajanlal***¹ laid down seven guidelines which are as follows:

- "(1) 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.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.
- (3) Where the 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.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) 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."

¹ 1992 Supp. (1) SCC 335

As per guidelines 2 and 3, if the allegations made in the complaint or report if taken on their face value would not constitute any offence, the Court may exercise power and quash the proceedings. Similarly, as per guideline No. 7, if the Court finds that the allegations made in the complaint are to wreak vengeance against the accused, as an abuse of process of the Court, the Court may exercise such power to scuttle the proceedings at the threshold. In the case on hand, filing charge sheet against petitioner No. 2 is nothing but abuse of process of the Court and on the other hand, the material produced before the Court would *prima facie* show that petitioner No. 1 allegedly issued cheques without sufficient funds to the credit of her account while permitting respondent No. 2 to fill up the blanks in the cheques. Therefore, I find no ground to quash the proceedings against petitioner No. 1 while quashing the proceedings against petitioner No. 2.

5. The criminal petition is accordingly partly allowed quashing the proceedings against petitioner No. 2 in C.C.No. 146 of 2016 on the file of the Court XII Additional Chief Metropolitan Magistrate, Nampally at Hyderabad, while dismissing the petition against petitioner No. 1. Pending miscellaneous petitions, if any, in this criminal petition shall stand closed in consequence.

Date: 12-12-2017.

JSK

M.SATYANARAYANA MURTHY, J.