THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.10506 of 2017

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the C.C.No.98 of 2017 on the file of I Special Metropolitan Magistrate, R.R.District at L.B.Nagar, registered for the offences punishable under Section 138 of Negotiable Instruments Act (for short "the Act").

It is contended in the petition that the petitioner has issued the alleged cheque as a security for the amount due by Sri Shekar Reddy to the complainant, the said cheque was not issued towards discharge of legally enforceable debt or liability. It is also contended that when the said Sri Shekar Reddy repaid the entire amount and demanded for return of the cheque, the complainant informed that the cheque was misplaced, thereby Sri Shekar Reddy maintained silence without insisting for return of cheque. Later, the said Sri Shekar Reddy colluded with the complainant herein and got filed the present complaint. Since the cheque was not issued towards discharge of legally enforceable debt and it was issued as a security for the amount due by Sri Shekar Reddy the proceedings in C.C.No.98 of 2017 on the file of I Special Metropolitan Magistrate, R.R.District at L.B.Nagar are liable to be quashed.

The first and foremost contention of the learned counsel for the petitioner is that the cheque was issued as a security for payment of the due amount by Shekar Reddy.

As seen from the allegations in the complaint, the petitioner himself borrowed a sum of Rs.2,00,000/- from the complainant, later pursuant to the demands made by the complainant, the petitioner issued the cheque bearing No.642196 dated 03.04.2017 drawn on State of Bank of India, L.B.Nagar, but the same was dishonoured. After complying with the necessary formalities under Section 138 of the Act, the complainant filed the present complaint.

Whether the cheque was issued for security purpose cannot be decided at this stage while deciding a petition under Section 482 of Cr.P.C.

The truth in the allegations made in the complaint cannot be decided into while deciding an application filed under Section 482 of Cr.P.C. to quash the proceedings.

However, at best the Court can decide the application filed under Section 482 of Cr.P.C. based on the allegations made in the complaint itself. But here, based on the allegations made in the complaint, this Court cannot quash proceedings while exercising jurisdiction under Section 482 of Cr.P.C. since the allegations made in the complaint *prima facie* constitute an offence punishable under Section 138 of the Act.

Learned counsel for the petitioner further contended that the cheque was not issued towards discharge of legally enforceable debt or liability.

There is a presumption under Section 139 of Negotiable Instruments Act. According to it, the Court shall presume unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, or any debt or other liability. When once the cheque is issued by the drawer a presumption under Section 139 of Negotiable Instruments Act in favour of the holder must follow in view of the judgment of the Apex Court rendered in "***Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.***[1]"

The presumption under Section 139 of Negotiable Instruments Act is a rebuttable presumption and such presumption can be rebutted either by eliciting something in the cross-examination of prosecution witnesses or by adducing independent evidence to dispel the statutory presumption contained under Section 139 of Negotiable Instruments Act. But at this stage, in view of the presumption under Section 139 of Negotiable Instruments Act, it is difficult to conclude that the cheque was not issued towards legally enforceable debt and on that ground the proceedings cannot be quashed.

On an overall consideration of the entire material available on record, I find no ground to quash the proceedings by exercising jurisdiction under Section 482 of Cr.P.C. as the allegations made in the complaint on their face value would constitute an offence punishable under Section 138 of Negotiable Instruments Act in view of the guideline No.1 laid by the Apex Court in "***State of Haryana v. Bhajan Lal***[2]". Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed. No costs. However, it is left open to the petitioner to raise all these pleas before the trial Court during trial.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

13.11.2017
Ksp

[1] AIR 2016 Supreme Court 4363
[2] 1992 Supp. (1) SCC 335