

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10348 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) to quash the proceedings in C.C.No.23 of 2017 pending on the file of the II Metropolitan Magistrate, Cyberabad at L.B.Nagar.

The respondent-M/s. Hanuman Traders, represented by its proprietor Sri K.Vara Prasad, filed a complaint under Section 200 Cr.P.C. against the petitioners herein for the offence punishable under Section 138 of the Negotiable Instruments Act ("the Act" for brevity) making specific allegations that on 20.10.2016 the second petitioner approached the complainant and informed that he is in need of 450 bags of cement. As per the request made by the second petitioner, respondent supplied 450 bags of cement at the rate of Rs.315/- per bag. Again on 21.11.2016 the second petitioner requested the respondent to supply 400 bags of cement and accordingly, the respondent supplied another 400 bags of cement at the same rate and again on 10.12.2016, the second petitioner requested the respondent to supply 450 bags of cement and accordingly, the respondent supplied 450 bags of cement at the same rate. Thus, the second petitioner, being the proprietor of the first petitioner, became due an amount of Rs.3,15,000/- to the respondent towards supply of 1300 bags of cement.

As the second petitioner promised to pay the amount within 20 days, the respondent did not insist for payment. After 20 days of supply of cement, at the instance of the respondent, the second petitioner issued cheques bearing Nos.530852 and 530851 for

Rs.1,25,000/- each dated 13.02.2017 and 25.02.2017 respectively drawn on State Bank of Hyderabad, Bandlaguda Branch, Ranga Reddy District of his firm account. When the cheque was presented through collecting bank i.e. Vijaya Bank, Karmanghat Branch on 18.03.2017, they were returned unpaid with cheque return memos and endorsement 'funds insufficient'. Thereupon a notice was issued in compliance of Section 138(b) of the Act, receipt of the same was acknowledged. As the amount due remained unpaid, the respondent filed the present complaint.

In the present petition, the petitioner raised specific contentions that Sri P.Arun Kumar Reddy was not the proprietor of D'LITE CLC Blocks and he was only an employee of D'LITE CLC Blocks and his wife is the proprietrix of D'LITE CLC Blocks and without impleading her, the complaint is not maintainable against this petitioner. The second contention is that without impleading the firm, the complaint is not maintainable. He relied on the judgment of this Court in **Anil Bhutoria and others v. State of Andhra Pradesh and another**¹.

Counsel for the petitioner-A2 reiterated the contentions urged in the petition while contending that summons was issued to the wife of the petitioner and drawn the attention of this Court to the summons issued to P.Arun Kumar Reddy, first page of Passbook issued by State Bank India and Driving License to contend that the petitioner is not the proprietor of the business D'LITE CLC Blocks and requested this Court to quash the proceedings in C.C.No.23 of 2017 filed for the offence punishable under Section 138 of the Act.

¹ 2015(1) ALD (CrI.) 972

To quash the proceedings, the Court is required to go into the allegations in the complaint, which on its face value would not constitute an offence punishable under any of the penal provisions, this Court can exercise its power under Section 482 Cr.P.C. and quash the proceedings.

In **State of Haryana v. Bhajan Lal**² this Court considered in detail the scope of provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

- (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.

² 1992 Supp. (1) SCC 335

(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.

In the present case, the respondent filed private complaint against this petitioner for the offence punishable under Section 138 of the Act based on two cheques, which were dishonoured on their presentation by the payee bank dated 25.02.2017 and 13.02.2017 for Rs.1,25,000/- each signed by the proprietor of the D'LITE CLC Blocks and the signature on the cheques is not identified. Whether it is the signature of the proprietor of D'LITE CLC Blocks or not is the question to be decided at the end of trial of the case. Now the contention before this Court is that the petitioner is only a private employee and not a proprietor of the D'LITE CLC Blocks.

As seen from the allegations made in the complaint, the petitioner is the person who issued cheques and they were dishonoured on their presentation for collection. Whether the petitioner is the proprietor or not is a question of fact to be decided based on the evidence produced before the trial Court. At this stage, in exercise of power under Section 482 Cr.P.C., this Court cannot quash the proceedings since the allegations made in the complaint make out a *prima facie* case against this petitioner for the offence punishable under Section 138 of the Act. However, it is left open to the petitioner to establish that he is not the proprietor of the D'LITE CLC Blocks and that he did not issue any cheque by

adducing evidence but based on the first page of the Passbook issued in favour of Smt. Pashya Swapna W/o.P.Arun Kumar Reddy-the petitioner herein and the driving license issued by Government of Andhra Pradesh proceedings in C.C.No.23 of 2017 pending on the file of the II Metropolitan Magistrate, Cyberabad cannot be quashed by exercising power under Section 482 Cr.P.C.

The second contention raised by the counsel for the petitioner is that when the firm is not impleaded in the complaint, the complaint is not maintainable. Here, the transactions are between M.s Hanuman Traders and D'LITE CLC Blocks, as per the allegations made in the complaint and the proprietor K.Vara Prasad representing M/s. Hanuman Traders filed the complaint and it is not a firm registered under the Partnership Act, 1932 or a company registered under the Companies Act, 1956. Therefore, question of impleading the firm as a complainant does not arise in this case since the sole proprietary concern is the complainant represented by its proprietor. Though he placed reliance on **Anil Bhutoria** (1 supra) where this Court held that when the firm or company is not impleaded, the complaint is not maintainable against its directors or the partners but the said principle cannot be applied to the present facts of the case for the simple reason that the complainant is a sole proprietary concern and it is not either a firm or a company registered under the Partnership Act, 1932 or Companies Act, 1956. Therefore, on the ground that the respondent-complainant failed to implead the firm as a complainant is not a ground to quash the proceedings and even otherwise, M/s. Hanuman Traders represented by Sri K.Vara Prasad is the complainant. Therefore, on this ground the

complaint cannot be quashed at this stage. Hence, I find no ground to exercise power under Section 482 Cr.P.C. to quash the proceedings in C.C.No.23 of 2017. However, it is left open to the petitioner to raise all these contentions before the trial Court since these contentions are questions of fact to be decided only during trial.

The Criminal Petition is dismissed. Miscellaneous petitions, if any, pending shall stand dismissed.

(M.SATYANARAYANA MURTHY, J)

8th November 2017
RRB

