

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10713 OF 2017

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C. No.203 of 2017 pending on the file of I Additional Judicial Magistrate of First Class at Proddatur on the ground that the petitioner did not acknowledge the debt and issuance of cheque towards discharge of the debt, which was not acknowledged would not amount to acknowledgement thereby, prosecuting the proceedings punishable under Section 138 of N.I Act by the respondent is abuse of process of Court and requested to quash the proceedings.

2) The respondent filed a complaint before the Magistrate against the petitioner for the offence punishable under Section 138 of N.I Act alleging that the petitioner borrowed an amount of Rs.5,00,000/- and while agreeing to repay the same together with interest at 24% p.a. executed a promissory note. Later, the amount was not paid but at the instance of the respondent, he issued cheque bearing No.575099 drawn on IDBI Bank, Banjara Hills Branch, dated 10.08.2013 for Rs.6,30,500/- towards discharge of the debt due under the promissory note. But the cheque was not presented for collection. However, the petitioner again issued a cheque bearing No.575151 dated 20.09.2015 for Rs.5,00,000/- drawn on IDBI, Banjara Hills Branch, towards part payment of the said loan and on its presentation with Karur Vysya Bank Limited, Proddatur Branch, the cheque was returned unpaid with endorsement 'Funds Insufficient'. The respondent was intimated the same together with memo and thereby, a legal notice dated 12.01.2016 got issued by the respondent in compliance of Sub-clause (b) proviso 2 of Section 138 of N.I Act and

calling upon the petitioner to repay the amount covered by unpaid cheque but the petitioner did not pay the amount covered by dishonour of cheque. Hence he filed the complaint.

3) The only ground urged before this Court, by the learned counsel for petitioner is that the cheque bearing No.575099, dated 10.08.2013 for Rs.6,30,500/- would not constitute acknowledgement of debt under Section 18 of Limitation Act and thereby would not stand the limitation extended and issuance of cheque on 20.09.2015, which was dishonored on its presentation by the payee Bank, does not constitute an offence punishable under Section 138 of N.I Act as the cheque was issued towards discharge of part debt and the claim under promissory note is barred by issue of said cheque. Learned counsel for the petitioner drawn the attention of this Court to a judgment of Madras High Court in ***K.Kunraravel vs R.P.Rathinam***¹ in support of his contention.

4) Keeping in view of the specific contention raised by the learned counsel for the petitioner and admitted facts in the complaint, the question as to whether the issue of cheque bearing No.575099 dated 10.08.2013 for Rs.6,30,500/- towards part payment and failure to present the same on account of request made by the petitioner (vide para No.12 of the complaint) constitute an acknowledgment or not, has to be decided.

5) Learned counsel for the 2nd respondent contended that the issue of cheque for Rs.6,30,500/- referred to above would constitute acknowledgement of debt and such question cannot be decided while exercising the power under Section 482 Cr.P.C since it is a question of fact to be decided only at the end of trial.

¹ 2010 Law suit (Madras) 3404

6) Whether issuance of cheque for Rs.6,30,500/- constitutes acknowledgment under Section 18 or 19 of Limitation Act and then the issuance of cheque bearing No.575151 dated 20.09.2015 for Rs.5,00,000/- and its dishonour on its presentation would constitute an offence, are the questions to be decided during the trial.

7) While deciding an application under Section 482 Cr.P.C, the Court has to verify the contents of the complaint and the documents annexed to it in detail and if the Court concludes that the complaint did not disclose prima facie case on face value of the complaint and found that it was filed to wreck vengeance etc., or barred by any other law, the Court can quash the proceedings. But, here the dispute is with regard to acknowledgment of debt by issuing cheque bearing No.575099 dated 10.08.2013, for Rs.6,30,500/-. Such question cannot be decided by this Court while exercising the jurisdiction under Section 482 Cr.P.C. Even, in the judgment relied on by the counsel for petitioner in *K Kunarvel (supra)* the scope of issue of cheque towards legally subsisting liability, referred the judgment of this Court in ***Giridhari Lal Rathi vs P.T.V.Ramanujachari and another***² wherein the Single judge of this Court held that the alleged loan was advanced in the year 1985 and the cheque was issued in the year 1990. By the time the cheque was issued, the debt appears to have been barred by limitation because no acknowledgment was alleged to have been obtained by the appellant from the 1st respondent—accused before expiry of three years from the date of loan.

8) But in the present proceedings, the cheque was issued, which was not presented. Whether such issued cheque would constitute an acknowledgment under Section 18 or 19 of the

² 1997 (2) Crimes 658

Limitation Act, the question has to be decided during trial. Further, if it is found that it would not constitute acknowledgment of debt, then the petitioner is entitled to benefit of acquittal at the end of trial, but at this stage basing on the allegations made in the complaint, the Court cannot quash the proceedings in C.C. No.203 of 207.

9) The judgment of Madras High Court is not applicable to the present facts of the case directly for the reason that the cheque was issued even before bar of limitation from the date of borrowing but whether it would constitute acknowledgement or not and the second cheque was issued within three years from the date of issuance of cheque by the alleged acknowledgment of debt, has to be decided. Hence, at this stage, by exercising the power under Section 482 Cr.P.C, the proceedings in C.C. No.203 of 2017 on the file of I Additional Judicial Magistrate of First Class at Proddutur, cannot be quashed. However, it is left open to the petitioner to raise the plea during the trial and the trial Court is directed to decide the issue of acknowledgment at the end of trial.

10) With the above direction, the Criminal Petition is disposed of at the stage of admission. Consequently, miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

16.11.2017
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Date:16.11.2017

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