THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.11160 of 2017

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the S.T.C.No.9 of 2017 on the file of Judicial First Class Magistrate, Rajampet, YSR Kadapa District, registered for the offences punishable under Section 138 and 141 of Negotiable Instruments Act (for short "the Act").

The main ground urged in this petition is that there was no legally enforceable debt and the cheque was not issued towards discharge of legally enforceable debt or liability, therefore, the proceedings in S.T.C.No.09 of 2017 on the file of Judicial First Class Magistrate, Rajampet, are liable to be quashed.

The respondent No.2 filed a complaint for the offence punishable under Section 138 of Negotiable Instruments Act alleging that the petitioner No.1/accused No.1 i.e. M/s Bakers Inn Global Private Limited (formerly known as Balaji Foods) is a company incorporated under the provisions of the Companies Act, 1956, vide Registration No.077976 and has its registered office in Hyderabad and engaged in the production and sale of goods and services, viz., Cakes, Biscuits, Bread, Chocolate, Candee, Toffee Confectionary, Sweetmeats, Savouries etc. under the name and style of "Bakers Inn". The petitioner No.2 is the Managing Director of the company and the petitioner No.3 is the Director of the company and both are promoters. The affairs of the petitioner No.1 - company are managed by the petitioner Nos.2 and 3 only, as such the petitioners Nos.2 and 3 only having control over the affairs of the petitioner No.1 company. Petitioner Nos.2 and 3 having acquaintance with the family of respondent No.2, approached him for loan of Rs.10,00,000/- only to meet the urgent needs as the supplies to the orders on hand are the lifeline to the company, in pursuance of the request made by petitioner Nos.2 and 3, the respondent No.2 paid Rs.10,00,000/- as hand loan. Though the petitioner Nos.2 and 3 agreed to repay the same within three (3) months, they did not repay the same. Petitioner No.3 persuaded the respondent No.2 to wait for one more month. Later, the respondent No.2 demanded for payment of the amount, thereupon a cheque bearing No.000991 dated 01.01.2016 drawn on City Union Bank Limited, R.K.Nagar Colony, Malkajgiri, Hyderabad was issued and the same was duly singed by petitioner No.2 on behalf of petitioner No.1 – company and requested the respondent No.2 to present the same in the third week of January, 2016. Accordingly, the respondent No.2 presented the said cheque on 16.01.2016 for collection, but the same was returned unpaid for the reason 'account closed' with a memo dated 19.01.2016. The said memo was received by the respondent No.1 on 21.01.2016. Thereupon, in compliance of clause (b) to Section 138 of the Act, respondent No.2 issued a legal notice dated 29.01.2016 calling upon the petitioners herein to repay the amount covered by the dishonoured cheque within 15 days of the receipt of the notice. The said notice was received by the petitioners on 02.02.2016 and issued a contentious reply, but the amount covered by unpaid cheque was not paid within stipulated time.

Learned counsel for the petitioners contended that the cheque was not issued towards discharge of legally enforceable debt and the petitioners issued appropriate reply denying the subsisting legally enforceable debt or liability, in such case, the proceedings against the petitioners cannot be continued in S.T.C.No.09 of 2017 on the file of Judicial First Class Magistrate, Rajampet.

No doubt, the petitioners issued reply dated 26.02.2016 denying the allegations made in the notice got issued by the respondent No.2 while contending that the respondent No.2 approached the petitioners for financial help of Rs.10,00,000/-, for which petitioners issued undated cheque of Rs.10,00,000/-. Thus, the petitioners admitted about issuance of cheque for Rs.10,00,000/- without any date, when the respondent No.2 requested for amount.

Whether the cheque was issued by the petitioners towards discharge of legally enforceable debt or liability or the cheque was issued by the petitioners to the respondent No.2 towards loan without putting any date is a question of fact to be decided during trial. When the petitioners admitted issuance of cheque duly signed by them, the presumption under Section 139 of the Act would come into operation and the Court shall draw a presumption that the cheque was issued towards discharge of legally enforceable debt or liability. When, once issue of cheque was admitted by the drawer a presumption under Section 139 of Negotiable Instruments Act in favour of the holder must follow.

A similar question came up before the Apex Court in A similar question came up before the Apex Court in "***Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.***[1]" The facts of the above case are almost identical with regard to the issue of cheque towards discharge of legally enforceable debt, wherein the Apex Court made it clear that the disputed

[1] AIR 2016 SC 4363

question of fact cannot be gone into while exercising power under Section 482 of Cr.P.C and the proceedings cannot be quashed on the ground that the cheque was not issued towards the discharge of legal enforceable debt adverting to Section 139 of Negotiable Instruments Act.

However, 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 complainant 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 *prima facie*. Consequently, the petition is liable to be dismissed.

In the result, the Criminal Petition is dismissed. No costs.

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

JUSTICE M. SATYANARAYANA MURTHY

20.11.2017
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