

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 10394 OF 2017

ORDER:

This 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. 653 of 2016 on the file of the Court of Judicial Magistrate of I Class, Tadipatri (for short, 'the Court below').

2. Respondent No. 1 filed a private complaint against the petitioner alleging that they entered into a memorandum of understanding on 30-04-2015 (for short, 'MOU'), wherein the latter agreed to sell land admeasuring Ac. 160.00 cents situated at Gangubudi Village and Gajapathinagaram Village of L. Kota Mandal, Vizianagaram District; the petitioner received total sum of Rs.1,25,00,000/- towards sale consideration from him and endorsed the same on the reverse of the MOU; on 27-02-2016, the petitioner executed an agreement in his favour agreeing to repay the said amount with interest on or before 25-03-2016 and to cancel the MOU; even after the due date, the petitioner failed to repay the amount to him as agreed; on repeated demands made by him for repayment, the petitioner issued three cheques on 16-06-2016 each for Rs.50,00,000/- drawn on State Bank of India, Kothavalasa Branch, in favour of respondent No. 1 towards discharge of the debt due under the MOU and the agreement dated 27-02-2016; when respondent No. 1 presented the said cheques for collection with the collecting bank i.e. Tadipatri Cooperative Town Bank Limited, Tadipatri, the same were returned unpaid with cheque returned memo dated 27-09-2016 on the ground that funds are insufficient; on receipt of cheques returned along with the memo, respondent No. 1 got issued legal notice dated 10-10-2016 calling upon the petitioner to pay the amount covered by the cheques returned unpaid

by the payee bank and receipt of the same was acknowledged by the petitioner on 21-10-2016 but the petitioner neither paid the amount nor issued any reply within the time prescribed in the notice and hence, the complaint.

3. During trial, respondent No. 1 himself was examined as P.W.1 on 05-10-2017 and got marked Exs.P1 to P10 on his behalf. At this stage, the petitioner invoked jurisdiction of this Court under Section 482 Cr.P.C. to quash the proceedings on the ground that the cheques were not issued towards discharge of legally enforceable debt or liability and that the cheques were obtained on behalf of M/s. Sampada Avenue Private Limited (for short, 'SAPL') but respondent No. 1 filed the present complaint against the petitioner erroneously though there is no legally enforceable debt between the petitioner and respondent No. 1. It is also contended that when the agreement was between the petitioner and SAPL and not between respondent No. 1 and the petitioner, issue of cheques by the petitioner is not towards discharge of whole or part of the legally enforceable debt or liability. In the absence of *prima facie* material to establish that the cheques were issued in favour of respondent No. 1 towards discharge of legally enforceable debt or liability, the proceedings are liable to be quashed.

4. During hearing, learned counsel for the petitioner while reiterating the contentions raised in the petition would draw the attention of this Court to the documents filed along with the petition.

5. As could be seen from the contention of learned counsel for the petitioner before this Court that the cheques were not issued towards discharge of legally enforceable debt but as per the allegations made in the complaint, the cheques were issued towards discharge of legally enforceable debt under the agreement executed between the petitioner and SAPL for sale of certain land. Whether or

not the cheques were issued towards discharge of legally enforceable debt or liability is a pure question of fact to be decided since there is a presumption under Section 139 of the Negotiable Instruments Act, 1881 (for short, 'the Act') in favour of respondent No. 1 that the cheques are presumed to have been issued towards discharge of legally enforceable debt or liability. Therefore, such a disputed question of fact cannot be decided while exercising jurisdiction under Section 482 Cr.P.C. Though the presumption under Section 139 of the Act is rebuttable, until such presumption is rebutted or dispelled by eliciting anything in the cross-examination of the witnesses of respondent No. 1 or by examining independent witnesses, the cheques are presumed to have been issued towards discharge of legally enforceable debt or liability. Hence, on the ground that the cheques were not issued towards legally enforceable debt or liability, the proceedings cannot be quashed.

6. The other contention raised by learned counsel for the petitioner is that SAPL entered into the agreement with the petitioner and the cheques were issued by the petitioner in the name of Yeruva Joji Reddy, who is the Director of SAPL. As per the contents of the MOU, the petitioner received huge amount on various dates and endorsed the same on the reverse of first page of the MOU duly signed by him. The cheques were issued by the petitioner, the first party to MOU. Though SAPL was the second party to MOU, represented by its Director Yeruva Joji Reddy, the cheques were issued in the latter's name. When the cheques were issued in favour of respondent No. 1, whether or not there was any subsisting relationship of debtor and creditor is a pure question of fact to be decided during trial. Hence, I find no ground to quash the proceedings at this stage.

7. The criminal petition is accordingly dismissed however with liberty to the petitioner to raise all the above pleas during trial before the Court below. Pending miscellaneous petitions if any in this criminal petition shall stand dismissed in consequence.

Date: 07-12-2017.

M.SATYANARAYANA MURTHY, J.

JSK

