

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.9963 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.59 of 2016 on the file of the III Additional Chief Metropolitan Magistrate, Gajuwaka, Visakhapatnam, for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act ("the Act" for brevity).

The second respondent is carrying on finance business and the petitioner allegedly borrowed amount from the second respondent under loan agreement No.NRTFVIZ09E00045 dated 17.12.2009 for an amount of Rs.75,00,000/- and loan agreement No.NRTFVIZ10E00066 dated 31.07.2010 for an amount of Rs.25,00,000/- by creating hypothecation. It is the contention of the petitioner that he issued blank signed cheques as security for due payment of the amount in favour of the second respondent. The second respondent earlier filed complaints in C.C.No.282 of 2014 (Old No.178/2014) and C.C.No.360 of 2014 (Old No.292/2014) for the offence punishable under Section 138 of the Act for dishonour of two different cheques on presentation for collection with the collecting bank but the defence set up by the petitioner was accepted in those two cases and the Courts below held that the petitioner did commit no offence punishable under Section 138 of the Act, since the second respondent failed to establish that the cheques were issued towards discharge of loan covered by agreement. It is further contended that the cheque in dispute is the subject matter of C.C.No.59 of 2016 allegedly issued

towards discharge of the debt due under the agreements dated 17.12.2009 and 31.07.2010 referred to supra. Therefore, taking advantage of the judgment in two calendar cases, the petitioner sought for quashment of proceedings in C.C.No.59 of 2016 on the file of the III Additional Chief Metropolitan Magistrate, Gajuwaka, Visakhapatnam.

Sri P.Durga Prasad, learned counsel for the petitioner, contended that in view of dismissal of earlier two calendar cases finding the petitioner not guilty for the offence punishable under Section 138 of the Act and acquitting him is sufficient to conclude that these cheques were issued not to discharge the legally enforceable liability and requests to quash the proceedings.

Admittedly, the second respondent filed a complaint for the offence punishable under Section 138 of the Act alleging that the cheque issued by the petitioner towards discharge of legally enforceable debt or liability on its presentation for collection was dishonoured and after compliance of necessary requirements i.e. by issuing notice calling upon the petitioner to pay the amount covered by the dishonoured cheque, the petitioner failed to pay the amount covered by the cheque and allegedly issued a reply. Dismissal of earlier two calendar cases in C.C.No.282 of 2014 (Old No.178/2014) and C.C.No.360 of 2014 (Old No.292/2014) and finding the petitioner-accused not guilty of the offence is after full-fledged trial since the second respondent failed to establish that the cheques were issued to discharge the legally enforceable debt or liability and therefore, such finding recorded by the Courts below after full-fledged trial may not come in the way of proceeding with the matter pending before the III Additional Chief

Metropolitan Magistrate, Gajuwaka, Visakhapatnam in C.C.No.59 of 2016. The finding recorded by the Courts below in both the calendar cases was based on the evidence adduced by both the parties and therefore, basing on the acquittal and finding the petitioner not guilty, proceedings in this case cannot be quashed since the allegations made in the complaint on its face value constitute an offence punishable under Section 138 of the Act. However, it is left open to the petitioner to raise such plea during the trial. Hence, I find no ground to quash the proceedings at this stage.

In the result, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending shall stand dismissed.

(M.SATYANARAYANA MURTHY, J)

31st October 2017
RRB

