THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.10101 OF 217

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.166 of 2016, pending on the file of III Special Magistrate, Malkajgiri, Ranga Reddy District, against the petitioners/A1 to A4, for the offence punishable under Section 138 of the Negotiable Instruments (Amendment) Act, 2015 (for short 'the Act').

2. The 1st respondent filed private complaint alleging that the 1st petitioner/M/s Royal Home Constructions is the business concerned engaged in the construction of multi storied buildings and complexes, having its registered office at premises bearing Municipal No.8-6-684/4/16, Anand Banjara Colony, Road No.12, Banjara Hills, Hyderabad and further contended that petitioners 2 to 4 are managing day to day business affairs of the 1st petitioner concern. Petitioners 2 to 4 issued three cheques on behalf of petitioner No.1 i.e. 1) Cheque No.236939, dated 15.10.2015 for Rs. 1,00,000/-, 2) cheque No.23641, dated 15.11.2015 for Rs.1,00,000/- and 3) cheque No.236940, dated 15.12.2017 for Rs.1,00,000/- drawn on Axis Bank Limited, Jubilee Hills Branch, Hyderabad towards legally enforceable liability or debt. Again petitioners 2 and 3 issued six cheques on 20.07.2016 for Rs.50,000/- each on behalf of the 1st petitioner drawn on Indian Bank, Banjara Hills, Hyderabad. On presentation of the said cheques, they were returned with an endorsement 'insufficient funds', thereafter, a notice under Clause (b) of proviso to Section 138 of the Act was issued calling upon the petitioners to pay the amount covered by returned cheques within the time stipulated

therein. But the petitioners did not pay the amount covered by the cheques returned unpaid.

3. The petitioners filed this petitioner mostly on two grounds. The first ground is that petitioners 2 to 4 are looking after the day to day affairs of the 1st petitioner and that there is nothing on record to establish that the petitioners are concerned with the 1st respondent. The second ground is that in the absence of any details regarding the amount covered by the cheques, the petitioners cannot be tried for the offence punishable under Section 138 of the Act and prayed to quash the proceedings.

4. During hearing, learned counsel for the petitioners reiterated the said contention while drawing the attention of this Court to paras 1, 3 and 6 of the complaint where the material allegations which constitute an offence are averred.

5. Whereas, counsel for the 1st respondent contended that an application for discharge of the petitioners filed before the Magistrate and the 1st respondent produced several documents to establish that they constituted the partnership firm including the firm registration certificate, therefore, the Magistrate dismissed the said petition, which attained finality and that the said order was not challenged before this Court or any other Court. Hence, the same cannot be raised before this Court. The second contention is that there is a presumption under Section 139 of the Act that the cheques were issued towards legally enforceable liability or debt, which is a disputed question of fact and the same cannot be decided while exercising power under Section 482 Cr.P.C.

6. As seen from the complaint, there is a clear averment that petitioners 2 to 4 are partners of the 1st petitioner and managing

day to day affairs of the 1st petitioner and that the cheques were issued in favour of the 1st petitioner towards legally enforceable liability or debt. On presentation of those cheques, they were returned unpaid. Thereafter, notice under Section 138(b) of the Act was issued, but no purpose was served.

7. The first question whether the petitioners are attending to the day to day affairs of the 1st petitioner is a mixed question of law and fact. An application filed before the Magistrate and the same was dismissed based on the material produced by the 1st respondent and the same cannot be agitated before this Court invoking jurisdiction under Section 482 Cr.P.C.

8. The second ground urged before this Court is that the complainant did not disclose the details of the debt, but the averments in para 3 of the complaint discloses that A2 to A4 i.e. petitioners 2 to 4 issued cheques on behalf of the 1st petitioner towards discharge of legally enforceable liability or debt, which is sufficient to constitute the offence that the petitioners failed to pay the amount covered by the dishonoured cheques within the time stipulated on receipt of notice issued in compliance of Section 138(b) of the Act and apart from that there is a presumption under Section 139 of the Act that the cheques were issued towards discharge of whole or part of legally enforceable liability or debt and until those transactions are rebutted question of disbelieving such statutory presumption would arise only during trial. Similar question came up before this Court in ***Rampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.***[1] wherein the Apex Court held that when there is a presumption

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[1] AIR 2016 Supreme Court 4363

under Section 139 of the Act unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, or any debt or other liability, the Court cannot exercise inherent power under Section 482 Cr.P.C. and dismissed the petition. Applying the same principle to the present facts of the case, it is difficult to quash proceedings on any of the grounds urged before this Court. Therefore, I find no ground to quash the proceedings and consequently, the criminal petition is liable to be dismissed.

9. Accordingly, the criminal petition is dismissed. However, it is left open to the petitioner to raise all these contentions during trial.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M.SATYANARAYANA MURTHY,J

Dated: 27.12.2017
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