

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.11325 of 2017

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.129 of 2015 on the file of XXV Special Magistrate, Hyderabad, registered for the offences punishable under Section 138 read with 142 of Negotiable Instruments Act (for short "the Act").

The respondent No.2 filed a complaint against the petitioner for the offence punishable under Section 138 of the Act alleging that respondent No.2 is a divorcee and after return from England, she started working in Apollo Hospital as she is a qualified psychiatrist. Thereafter, the complainant as a divorcee, had applied through the Matrimonial Columns for marriage and through Bharat Matrimonial in the month of May/June - 2013, the complainant met the accused and the accused befriended her on the pretext that the accused was a businessman having various businesses and in the line of running hospitals from January 2013 and the accused slowly gained the confidence of the complainant and also proposed to marry her. Taking advantage of closeness, the petitioner married the complainant secretly on 22.07.2013 by tying Mangalsutram around the neck of complainant in the pooja room. On coming to know about the balance in the account of respondent No.2, the petitioner requested to lend Rs.20,00,000/- for business venture while promising to repay the same within two months. Believing the request of the petitioner, the respondent No.2 transferred an

amount of Rs.10,00,000/- on 26.07.2013 vide bank transfer from Indusind Bank to the account of the accused with ICICI Bank, S.R.Nagar Branch.

Later, on the request of the petitioner, complainant advanced Rs.3,75,000/- on 18.01.2014, for which the petitioner executed a promissory note agreeing to repay the same on or before 31.03.2014 on Rs.100/- Non-Judicial Stamp Paper. Again, the petitioner requested the complainant to advance Rs.1,97,600/- as the said amount is needed for the Tirumala Catering and Special Darshan. When the respondent insisted for repayment, the petitioner issued the following three cheques.

1. Cheque No.337378, dated 18.04.2014 for Rs.3,75,000/-
2. Cheque No.337379, dated 18.04.2014 for Rs.1,97,600/-
3. Cheque No.114773, dated 25.06.2014 for Rs.10,00,000/-

On presentation of those cheques on 07.07.2014 for collection in Andhra Bank, Apollo Hospital Branch, the said cheques were returned on 10.07.2014 with the endorsement "funds insufficient" with a memo. Thereafter, the complainant got issued a legal notice on 07.08.2014 in compliance of clause (b) to Section 138 of the Act, but the petitioner did not pay the amount covered by unpaid cheques and no reply was issued. Hence, she filed the complaint before the Magistrate for the offence punishable under Section 138 of the Act.

It is the contention of the petitioner before this Court that even according to the allegations made in the complaint filed by the respondent No.2, the amount was advanced by the complainant on the pretext of marriage, therefore it is not a legally

enforceable debt or liability, thereby the proceedings against the him in C.C.No.129 of 2015 are liable to be quashed. It is also contended that the complainant made an identical allegation in Crime No.123 of 2014, registered for the offence punishable under Section 498-A and 420 of I.P.C. and under Sections 3 and 4 of Dowry Prohibition Act, which is the subject matter of C.C.No.387 of 2015 on the file of XIII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad. When the complainant raised such contentions in C.C.No.387 of 2015, she is not entitled to recover the amount from the petitioner since the cheques were not issued towards discharge of legally enforceable debt or liability.

While deciding an application under Section 482 of Cr.P.C., the Court has to verify the contents of the complaint, and if the allegations made in the complaint would constitute any offence, the Court shall decline to exercise inherent power to quash the proceedings.

Here, in the present complaint, the complainant transferred Rs.10,00,000/- on 26.07.2013 from her account to the account of the petitioner with ICICI Bank, S.R.Nagar Branch, and paid Rs.3,75,000/- on 18.01.2014 and obtained promissory note from the petitioner, later complainant paid Rs.1,97,600/- towards special darshan and catering at Tirumala. But the amount of Rs.10,00,000/- was advanced by the complainant for business purpose vide paragraph No.2 of the complaint, similarly Rs.3,75,000/- was also advanced for business purpose, whereas an amount of Rs.1,97,600/- was advanced for Special Darshan and catering at Tirumala at the time of marriage. In paragraph No.6 of the complaint, it is alleged that "**the complainant**

submits that the accused with the intention to cheat, made the complainant into parting with Rs.15,72,600/- on the pretext of marriage”.

Taking advantage of this sentence in paragraph No.6 of the complaint, learned counsel for the petitioner vehemently contended that the cheques were not issued towards discharge of legally enforceable debt or liability, thereby it would not constitute the offence punishable under Section 138 of the Act.

Even if the allegations made in the complaint are taken into consideration, the petitioner allegedly borrowed the amount on the pretext of marriage but not consideration for marriage or otherwise. Therefore, when the petitioner issued cheques, which were dishonoured on their presentation for collection and returned with endorsement “funds insufficient”, the respondent got issued legal notice dated 07.08.2014 calling upon him to pay the amount covered by dishonoured cheques, but the petitioner did not pay the amount or issued any reply, but for the first time a specific contention is raised that the cheques were not issued towards discharge of legally enforceable debt or liability.

When the petitioner admitted issuance of cheques duly signed by him, the presumption under Section 139 of the Act would come into operation and the Court shall draw a presumption that the cheques were 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 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 cheques were not issued towards discharge of legally enforceable debt or liability 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

¹ AIR 2016 SC 4363

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

21.11.2017
Ksp

