HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

<u>CRIMINAL PETITION Nos.11172,11173 and 11174 of 2017</u>

<u>COMMON ORDER:</u>

Since the facts of the case, issues involved and the petitioners in these three petitions are one and the same, these Petitions are being disposed of by this Common Order.

All these three petitions are filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.211, 212 and 213 of 2017 pending on the file of VIII Metropolitan Magistrate, Cyberabad, Rajendranagar, Hyderabad, registered for the offence punishable under Section 138 of Negotiable Instrument Act, 1881 ('N.I. Act' for brevity).

Petitioner Nos. 1 to 3 are the accused and respondent No.2 is the de-facto complainant in all the petitions. Respondent No.2 filed private complaints against the petitioners for the offence punishable under Section 138 of N.I. Act, alleging that accused No.1 is the firm and accused Nos. 2 and 3 are the wife and husband, who are running business of the firm, developed acquaintance with respondent No.2/complainant and requested to arrange a hand loan for Rs.5,00,000/- each for their business necessities. Accordingly, the complainants in all the petitions advanced Rs.5,00,000/- each as hand loan to the accused, who agreed to repay the same within short time, but postponing the same on one pretext or the other. Finally, the accused issued cheques bearing No.00132, dt.13.04.2017, 000129 & 000130, dt.18.03.2017 and 22.03.2017 respectively for Rs.5,00,000/- each, drawn on Bank of Baroda, Attapur Branch, Hyderabad, towards discharge of legally enforceable debt/liability covered by the cheques i.e., hand loans. When the cheques were presented for collection in the month of April and March, 2017, the same were returned unpaid with cheque return memo dt. 09.05.2017.

On receipt of unpaid cheques along with memo dt. 09.05.2017 for the reason that 'payment stopped by the drawer', the complainants got issued Legal Notices dt.20.05.2017 calling upon the accused to pay the amount covered by the unpaid cheques/dioshonoured cheques within 15 days from the date of receipt of the notices. The receipt of the notices was acknowledged by the accused, who in turn sent a contentious reply to the notice given by the complainants, but they did not pay the amount covered by unpaid cheques/dishonoured cheques within the time. Hence, the complainants filed the complaints.

These three petitions are filed raising several contentions mainly on the ground that in all the three complaints, the accused made stereotype allegations through same advocate and got issued legal notices, but they also did not disclose anything about issuance of cheques in a petition under Section 482 Cr.P.C. for quashment of the proceedings in Crl.P.No.4308 of 2017 filed by S. Sripal Reddy, S. Venugopal Reddy, Bharath Reddy and P Madhu Sudhan Reddy, wherein respondent No.2/Smt Ravula Vijaya Jangaiah is petitioner No.2. But, the said respondent No.2 herein is not the party to the said proceedings. The other contention raised by the counsel for the petitioners is that when the petitioners did not appear before the Court, the Magistrate issued Non Bailable Warrants and immediately the same was telecasted in the news channel as second petitioner is a Corporator of Hyderabad Municipal Corporation. He further contended that the cheques were stolen illegally on 03.04.2014 and a crime was registered on 04.04.2017. Therefore, the cheques were not issued towards discharge of legally enforceable debt or liability and the stolen cheques were misused and these complaints were filed by the persons who stolen the cheques. A complaint was lodged against the unknown persons and it is registered as a case in Cr.No.205 of 2017 for the offence punishable under Sections 509 and 506 IPC and therefore, the cheques were not issued towards discharge of legally enforceable debt or liability and the complaints were filed utilizing the cheques stolen from the house, as such, the proceedings cannot be continued and prayed to quash the proceedings in all Calender Cases.

During hearing, learned counsel for the petitioners reiterated the contentions referred to above and contended that the proceedings in all the Calender Cases cannot be continued, since those complaints were foisted as arm twisting method due to disputes between the petitioners and Manohar Reddy, against whom the suit for specific performance in O.S.No.718 of 2017 was filed by Seguru Mohan Reddy against Ravula Srisailam and Ravula Jangaiah, (petitioner No.2 herein) and Ravula Raju based the agreement and the said Monohar Reddy, by colluding with these complainants, got filed these complaints and requested to quash the proceedings.

The jurisdiction of this Court under Section 482 Cr.P.C. is limited and such power can be exercised only in rarest of rare cases, more particularly, where the complaint did not disclose the commission of any offence or accepting it on its face value or suffers from any legal infirmity like sanction etc. But the main contention before this Court is that those cheques were stolen from the house of the petitioners on 03.04.2017 and a complaint was registered against them on 04.04.2017. Whether the cheques were stolen or were issued by the petitioners themselves is a question of fact to be decided and the crime is pending against some unknown persons for commission of theft of cheques from the house of petitioners. At this stage, while exercising power under Section 482 Cr.P.C. on the ground that the cheques were stolen, the proceedings in Calender Cases cannot be quashed and it is to be investigated by the investigating agency and finally the trial Court has to decide whether the cheques were stolen by the petitioners or second respondent or any other person. More curiously, the offences registered against unknown person is under Sections 509 and 506 but not for the offence under Section 379 IPC.

The other contention raised by the petitioners is that the cheques were not issued towards discharge of legally enforceable debt or liability. No doubt, the petitioners are entitled to raise such contention when the complainant proved issuance of cheques or the accused admitted issuance of cheques, either filled or unfilled, but signed, the cheques will be inchoate stamped documents and in view of Section 20 of NI Act, the holder of the document can fill the same and present for collection. An identical question came up before the Division Bench of Court in Duggineni Seshagiri Rao Vs. Kothapalli Venkateswara Rao[1] wherein it was held in para 6 as follows:

> "Four things are necessary for an instrument to be a promissory note: 1) It should be in writing; 2) It should have an unconditional undertaking; 3) It should be signed by the maker; and 4) it should be in favour of ceratin person or to a bearer.
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> Section 20 makes inchoate stamped instruments legal instruments. The dictionary meaning of 'inchoate' is 'incomplete'. So, incomplete stamped instruments are as good as the instruments mentioned in Section 4 of the Act. Even if one looks to the definition of the 'promissory note' under Section 4, one would find that the requirements for making an instrument a promissory note do not contain the requirement of naming a person, it can be given in favour of a certain person or to bearer of the instrument. That makes it clear that, one who is holding the document is the person who derives rights out of that instrument. In other words, it would mean that the document with first three requirements as stated above, should be delivered to the payee, once it is delivered it becomes a promissory note. Name and other particulars can be filled up even at a later stage. When one reads Section 4 in conjunction with Sections 20 and 42 that is the only interpretation that can be placed on the meaning of 'promissory note' under Section 4 of the Act. Section 20

1 2001(6) ALT 95 (D.B.)

> lays down that when a person signs and delivers to another person a paper stamped in accordance with law relating to negotiable instrument it becomes a negotiable instrument even if it is wholly blank or written with incomplete particulars. Similarly, Section 42 even recognizes instrument issued in the name of fictitious person to be a valid instrument. Although Section 42 relates to bills but it also accepts that an acceptor of a bill of exchange even if it was in drawn in a fictitious name it would create a genuine claim in favour of the holder. Therefore, even if a negotiable instrument is incomplete it would be a legal instrument provided it satisfies the first three conditions.
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> Holder of the instrument becomes a bearer of the instrument."
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> Their Lordships further held as follows:
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> "The plaintiff had been able to prove the execution of the document. On the other had, if the document was disputed or doubted the onus was on the defendant to show that the document was a forgery because a presumption is in favour of plaintiff under Section 118 of the Negotiable Instruments Act."

In Sukhminder Singh Vs. Nirbhai Singh[2], the High Court of Punjab & Haryana also laid down the same principle as held in Duggineni Seshagiri Rao[1] case.

In this regard, I am persuaded by the judgment of the High Court of Karnataka in H.Maregowda and etc. Vs. Thippamma and others[3], wherein it was held as follows:

> "*A reading of Section 20 of the Negotiable Instruments Act which is extracted above will reveal that the words used are either wholly blank or having written thereon an incomplete negotiable instrument. Thus, even if a blank promissory note is given, it cannot be taken as a defence to avoid a decree based on such instrument, once it is found that the document produced before the Court satisfies the requirements of a promissory note within the meaning of the Negotiable Instruments Act. The instrument may be wholly blank or incomplete in particular; in either case, the holder has the authority to make or complete the instrument as a negotiable one.*"

In view of the law declared by the Division Bench of this Court and the High Court of Punjab and Haryana referred to above, the cheques cannot be held to be invalid when the cheques were issued and it is inchoate stamped document under Section 20 of NI Act.

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[2] AIR 2013 Punjab and Haryana page 77
[3] AIR 2000 Kant 169

According to Section 139 of NI Act, there is a presumption that the cheques were issued towards discharge of legally enforceable debt or liability either in part or full and the said presumption is rebutable. When the statutory presumption is in favour of the complainants, it is for the petitioners/accused to rebut the said presumption, either by adducing by independent evidence or by eliciting any fact in the evidence of complainant's witnesses to dispel such statutory presumption. An identical question came up before the Apex Court in Rampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.[4], 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. Hence, I find that it is not a ground to quash the proceedings at this stage. Consequently, the criminal petition is liable to be dismissed at the stage of admission.

In view of the law declared by the Apex Court, the contention that the cheques were not issued towards discharge of legally enforceable debt or liability either in full or part is a question to be decided during trial recording a fact finding and it is not a ground to quash the proceedings in pending Calender Cases.

Finally, it is contended that in earlier proceedings in Criminal Petition No. 4308 of 2017, no details were disclosed about these cheques. But, the petitioners herein are not parties to the said criminal petition, except respondent No.2 in Crl.P.No.11174 of 2017 i.e., petitioner No.1. Merely because the issuance of these cheques

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[4] 2016 (2) ALD (Crl.) 809 (SC)

was not disclosed in the earlier Criminal Petition No.4308 of 2017, the proceedings in all Calender Cases cannot be quashed.

On verification of entire material including the allegations made in the complaints, the complaints disclose commission of an offence punishable under Section 138 of NI Act, *prima facie*. However, the points urged before the Court are based on facts and such fact findings cannot be recorded by this Court while deciding an application under Section 482 Cr.P.C. This Court can exercise inherent jurisdiction under Section 482 Cr.P.C. only to give effect to the orders passed under the Code and to prevent abuse of process of law or to secure ends of justice. Keeping in view, the scope of Section 482 Cr.P.C., the Apex Court in *State of Haryana v. Bhajanlal*[5], laid down the following seven guidelines:

> (1)Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> 2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under section 156(1) of the code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
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> 3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
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> 4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under section 155(2) of the Code.
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> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
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> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

[5] 1992 Supp (1) SCC 335

> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

According to Guideline Nos. 2 and 3, the Court can exercise inherent jurisdiction to quash the proceedings, if the allegations made in the FIR or in the complaint did not disclose the facts to constitute an offence; or, the allegations made in the complaint or FIR are highly improbable. But in the case on hand, cheques were allegedly issued and on their presentation, they were dishonoured on the ground to stop payment by the drawer. Thereafter, in compliance of Clause-6 of proviso to Section 138 of NI Act, Notices dt.20.05.2017 were issued and receipt of the same was acknowledged by the petitioners and issued contentious reply, but those contentions can be decided only during trial, but not in these petitions filed under Section 482 Cr.P.C.

When the complaints filed by respondent No.2 are free from any legal infirmities and *prima facie* disclose commission of an offence punishable under Section 138 NI Act, this Court cannot exercise inherent jurisdiction under Section 482 Cr.p.C. to quash such proceedings, in view of the law declared by the Apex Court in *Bhajanlal's case (referred to above).* Therefore, these three Criminal Petitions are liable to be dismissed as they lack merit.

Accordingly, these three criminal petitions are dismissed.

As a sequel, miscellaneous petitions, if any, pending in these petitions, shall stand dismissed.

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M. SATYANARAYANA MURTHY, J

Date: 23-11-2017.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

<u>CRIMINAL PETITION Nos.11172,11173 and 11174 of 2017</u>

Dt. 23-11-2017

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