THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

Criminal Petition No.17373 of 2016

ORDER:

This Criminal Petition has been filed under Section 482 of Cr.P.C. seeking to quash the proceedings in C.C. No.8 of 2016 on the file of the Special Magistrate-cum-VI Additional Junior Civil Judge, Chittoor.

The main grounds urged before this Court are as follows:

a) The petitioner stated to have lost 107 signed cheques while his business was moved from one place to other and lodged a complaint to the Police. Taking advantage of the lost cheque, the present complaint is filed.

b) The second contention is that the petitioner purchased a house site plot from the father of the respondent for Rs.10,00,000/- (Rupees ten lakhs only) in the year 2004 and has paid Rs.1,00,000/- (Rupees one lakh only) as advance and executed a promissory note for Rs.5,00,000/- (Rupees five lakhs only) while agreeing to pay balance amount of Rs.4,00,000/- (Four lakhs only) on the date of registration on or before 30.06.2004. In terms of the agreement between the father of the respondent and the petitioner, the petitioner obtained a registered sale deed and paid the amount covered by the promissory note but father of the respondent did not return the promissory note on the ground that it was misplaced and promised to return the same. Reposing confidence on the respondent, the petitioner kept quiet.

c) The alleged part payments endorsements on the promissory note are forged and those endorsements shall not extend the time and the same was mentioned in the reply notice issued by the petitioner on 04.06.2013. Therefore, there is no subsisting legal liability enforceable debt and thereby the proceedings in C.C. No.8 of 2016 for the offence punishable under Section 138 of N.I. Act and also Sections 417 and 420 of IPC., shall not be continued and prayed to quash the proceedings.

The first contention is that the loss of cheques about 107 bearing different numbers and the petitioner lodged a complaint to the Police on 16.05.2013 mentioning different cheque numbers drawn on various banks including HDFC and ING Vysya but loss of 107 signed cheques of the petitioner is a strange incident, in normal course of events. If such ground is accepted to quash the proceedings the possibility of issuing cheques and lodging complaint with the Police about loss of cheque cannot be ruled out. The cheque in dispute was to be drawn on ING Vysya. In view of the return memo issued by the ING Vysya, on 24.07.2013, after dishonour, loss of cheques or issuance of cheque towards legally enforceable debt is a question of disputed fact and such question cannot be decided in a petition filed under Section 482 of Cr.P.C., exercising inherent power of quash.

The second contention is purchase of house site from the father of the respondent by executing a promissory note for Rs.5,00,000/- (Rupees five lakhs only) and its alleged discharge is a question of disputed fact, which is required to be decided after adducing evidence by both the parties.

Similarly, the question of forgery of endorsements if any referred in the notice are question of disputed fact which required to be proved by adducing evidence. Therefore, all the three grounds raised by the petitioner before this Court are purely disputed question of facts which cannot be decided by this Court by exercising powers under Section 482 of Cr.P.C. to quash the proceedings.

The counsel for the petitioner submitted that as the petitioner lodged complaint with the bank, about loss of cheques, the bank instead of returning the cheque, issued cheque return memo dated 24.07.2013, mentioning the reason marked at serial No.99 i.e. “other reason funds insufficient” along with dishonoured cheque. Signature of the petitioner on the lost cheque is also a question of fact.

The presumption under Section 139 of the N.I. Act is that the cheuqe was issued for discharging legally enforecable debt, but such presumption is rebuttable and the petitioner is entitled to dispel the presumption by cross-examination of witness of complainant or by adducing independent evidence to rebut the presumption is in favour of the respondent that the cheque was not issued towards the discharge of legally enforceable debt.

A similar situation came up before the Apex Court in ***SAMPELLY SATYANARAYANA RAO Vs. INDIAN RENEWABLE ENERGY DEVELOPMENT AGENCY LIMITED***[1] wherein the Supreme Court held that while decaling with quash petition the Court has ordinarily proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at that stage. The Court considering prayer for quashing does not adjudicate upon a disputed question of fact. It is further held that the presumption that the cheque was issued in favour of holder of cheque towards discharge of legally enforceable debt in view of Section 139 of N.I. Act, such presumption can be rebutted by adducing evidence, and mere statement of accused is not sufficient to rebut the presumption.

In the present case, the defence set up by the accused is many fold as discussed, same cannot be taken into consideration while deciding petition under Section 482 of Cr.P.C. Therefore, I find no ground to quash the proceedings in C.C. No.8 of 2016 pending on the file of Special Magistrate-cum-VI Additional Junior Civil Judge, and the petition is liable to be dismissed. Accordingly, dismissed.

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[1] AIR 2016 SC 4363

Consequently, miscellaneous petitions, if any, pending in this Petition shall stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 02.01.2017
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