THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.11727 of 2017

ORDER

This petition is filed under Section 482 of Cr.P.C., to quash the proceedings in C.C.No.281 of 2015 pending on the file of III Special Magistrate, Malkajgiri, Ranga Reddy District, registered for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act'), on the complaint filed by the second respondent against the petitioners/A1 and A2.

2. Petitioner No.1/A1 is the propriety concern, represented by petitioner No.2/A2, by name, K. Chandra Mohan. The second respondent, by name, M. Sidda Reddy, filed complaint under Section 200 of Cr.P.C., against petitioners for the offence punishable under Section 138 of the Act, alleging that petitioner No.2 being the Proprietor of petitioner No.1 borrowed an amount of Rs.20 lakhs on two different dates while agreeing to repay the same together with interest and issued a cheque for Rs.10 lakhs as part payment on 10.10.2014 drawn on Axis Bank, Tarnaka Branch, Hyderabad. He also issued a stamped receipt on 22.09.2014 acknowledging the receipt of a sum of Rs.20 lakhs. When the complainant presented the said cheque, it was dishonoured on the ground that the 'account blocked'. The cheque was returned along a cheque return memo.

3. On receipt of cheque return memo, the second respondent got issued a legal notice dated 13.01.2015 through his counsel calling upon the petitioners to pay the amount covered by the dishonoured

cheque. The receipt of notice was acknowledged by petitioner No.2, but neither paid the amount covered by the dishonoured cheque nor issued any reply. Therefore, petitioners are allegedly committed the offence punishable under Section 138 of the Act.

4. The present petition is filed to quash the proceedings on various grounds. The main ground urged before this Court during hearing is that the amount is not paid by the second respondent to petitioner No.2, but the amount was paid by Ms. M. Swarupa and Marri Snehitha Reddy to petitioner No.2 and therefore, there was no transaction of lending between the petitioners and the second respondent, who obtained cheque for Rs.10,00,000/-, which was returned on its presentation for collection, dishonouring, unpaid. Petitioners have not produced the Bank statement along with the petition so far as such contention. They admitted about issuance of cheque duly signed by petitioner No.2 and in such case, presumption under Section 139 of the Act would arise and the Court shall draw a presumption that the cheque was issued towards discharge of whole or part of the debt due to the second respondent. Section 139 of the Act though rebuttable, at this stage, the Court cannot conclude that the proceedings are initiated against the petitioners as an abuse of process of the Court since the presumption is in favour of the second respondent that the cheque was issued towards payment of the debt either in full or part towards legally enforceable debt or liability. A similar question came up before the Apex Court in **Sampelly Satyanarayana Rao v. Indian**

Renewable Energy Development Agency Ltd.[1] where 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. In view of the law declared by the Apex Court in the said judgment, the proceedings in C.C.No.281 of 2015 for the offence punishable under Section 138 of the Act cannot be quashed on the ground that the cheque was not issued towards discharge of legally enforceable debt or liability, since it is a question of fact to be decided at the end of trial. Therefore, applying the principle laid down by the Apex Court in the said judgment, I find that it is not a fit case to quash the proceedings at this stage.

5. The other contention of the learned counsel for petitioners is that the cheque was issued by the authorised signatory i.e., petitioner No.2 and thereby, the firm is not liable to pay the same and the sole proprietary concern is not liable to be proceeded for the offence punishable under Section 138 of the Act. Petitioner No.1 is the proprietary concern, represented by petitioner No.2. Petitioner No.2 being the sole Proprietor of petitioner No.1 borrowed the amount for business purpose of petitioner No.1. Therefore, issuance of a cheque as an authorised signatory of the sole proprietary concern would not make any difference and therefore, at this stage, the proceedings cannot be quashed. Hence, I find no ground to

[1] 2016 (2) ALD (Crl.) 809 (SC)

quash the proceedings by exercising power under Section 482 of Cr.P.C., since the Court is required to look into the allegations made in the complaint alone while deciding the petition filed under Section 482 of Cr.P.C., and if the Court finds that the allegations would constitute the offence punishable under Section 138 of the Act, *prima facie,* it can decline to exercise inherent powers under Section 482 of Cr.P.C. Therefore, I find that the petition is devoid of merit and is liable to be dismissed.

6. In the result, the Criminal Petition is dismissed, at the stage of admission. However, the petitioner is at liberty to raise all these contentions before the trial Court during trial and on raising such contentions, the trial Court is required to decide those legal or factual contentions in accordance with law.

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

M. SATYANARAYANA MURTHY, J

28th November, 2017

sj