THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.12687 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.439 of 2016 on the file of Judicial Magistrate of First Class at Godavarikhani, Peddapalli District, registered for the offence punishable under Section 138 of Negotiable Instruments Act (for short "N.I.Act.").

The petitioner is the accused in the said C.C.No.439 of 2016 and the respondent No.1 filed private complaint for the offence punishable under Section 138 of Negotiable Instruments Act alleging that the petitioner borrowed Rs.7,00,000/- as hand loan and to clear the debt due to the respondent No.1, the petitioner – accused issued cheque bearing No.095705 for an amount of Rs.4,50,000/- on 10.10.2012 and another cheque bearing No.095706 for an amount of Rs.2,50,000/- drawn on State Bank of India, Jagadevpur Branch, Jagadevpur, Medak District. On presentation of cheques for collection in State Bank of Hyderabad, Vittalnagar Branch, Godavarikhani on 15.10.2012, they were returned unpaid for the reason 'insufficient funds' in the account of the accused. Thereafter, the respondent No.1 got issued a legal notice dated 19.10.2012 in compliance of clause (b) to Section 138 of the Act calling upon the petitioner to pay the amount, and the same was acknowledged by the petitioner on 25.10.2012, but the debt was not discharged.

Learned counsel for the petitioner contended that the petitioner sold the immovable property to the respondent No.1 under registered sale deed dated 26.07.2012, by that time the property was mortgaged with the bank, the petitioner deposited original title deed and handed over blank signed cheques to the bank and after discharge of the debt, original title deed and the signed blank cheques were returned to the respondent No.1 by the bank authorities being the purchaser of the property. Taking advantage of the blank signed cheques, respondent No.1 created hand loan and filed the private complaint for the offence punishable under Section 138 of N.I.Act after completing necessary requirements under clause (b) to Section 138 of N.I.Act. Thus, there is no legally enforceable debt or liability and prayed to quash the proceedings.

As per the facts narrated above, according to the respondent No.1 the petitioner borrowed hand loan of Rs.7,00,000/-, in discharge of said hand loan the petitioner issued cheques bearing No.095705 and 095706 for an amount of Rs.4,50,000/- and Rs.2,50,000/- respectively. The signature on the cheques is not in dispute, but the learned counsel for the petitioner contended that the petitioner handed over blank signed cheques to the bank at the time of creating mortgage by depositing title deeds. Therefore, the bank is the holder of negotiable instrument and it is inchoate instrument under Section 20 of N.I.Act, which permits the holder of the instrument to fill the blanks and utilise the same as held by the Division Bench of this Court in "***Duggineni Seshagiri Rao v. Kothapalli Venkateswara Rao***[1]" the Division Bench of this Court, 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 certain person or to a bearer.

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

> 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 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 v. Kothapalli Venkateswara Rao***" (referred supra).

[2] AIR 2013 Punjab and Haryana page 77

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."*

If these principles are applied to the present facts of the case, the holder of the cheque is entitled to fill-up the blanks and present the same in bank for collection as per Section 20 of N.I.Act.

Learned counsel for the petitioner specifically contended that the respondent No.1 took back the signed blank cheques from the bank along with original title deed after discharging the debt, such question cannot be decided in a petition filed under Section 482 of Cr.P.C. since it is a question of fact and such question of fact can be decided only at the time of trial.

When the cheque was admittedly issued in favour of the bank duly signed by the petitioner, the presumption under Section 139 of the Act is in favour of the holder of the instrument. According to it, the Court shall presume 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. When, once issue of cheque was admitted by the drawer a presumption under Section 139 of

[3] AIR 2000 Kant 169

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.***[4]" 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

[4] AIR 2016 SC 4363

punishable under Section 138 of Negotiable Instruments Act *prima facie*. Consequently, the petition is liable to be dismissed as it is devoid of merits.

In the result, the Criminal Petition is dismissed. No costs.

Consequently, miscellaneous petitions pending, if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

20.12.2017
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