

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 12199 OF 2017

ORDER:

This petition under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') is filed by the petitioner to quash the proceedings in C.C.No. 602 of 2015 on the file of the Court of III Additional Chief Metropolitan Magistrate at Gajuwaka, Visakhapatnam District (for short, 'the Court below').

2. The petitioner is the accused and respondent No. 1 is the complainant. It is the case of the complainant that he and the petitioner entered into an agreement dated 31-05-2014 for construction of a building and he paid Rs.30,00,000/- as part of consideration out of Rs.63,75,000/-. However, the agreement dated 31-05-2014 was cancelled by another agreement dated 15-05-2015. In terms of the latter agreement, the petitioner issued three cheques bearing Nos. 766714, 766713 and 766715 for Rs.10,00,000/-, 10,00,000/- and 12,48,466/- respectively. When the cheques were presented for collection, the same were returned by the payee bank with endorsement that funds insufficient, along with cheques return memo dated 17-08-2015. Thereupon, notice in compliance of clause (b) of proviso to Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act'), was issued by respondent No. 1. On receipt of the same, the petitioner got issued reply but failed to pay the amounts covered by the cheques. Hence, the complaint.

3. The petitioner filed the present petition on the ground that in terms of condition Nos. (2) and (8) of the agreement dated 15-05-2015, prior notice is required to be issued before presentation of the cheques and the cheques were issued in pursuance of the agreement dated 15-05-2015 while canceling the earlier agreement dated 31-05-2014. When no prior notice as specified under

condition (2) of the latter agreement was issued, it would not constitute the offence punishable under Section 138 of the Act.

4. As seen from the material on record, the petitioner and respondent No. 1 entered into agreement dated 15-05-2015 canceling the earlier agreement dated 31-05-2014. Condition No. 2 of the agreement dated 15-05-2015 is relevant in view of the argument advanced by learned counsel for the petitioner and it is extracted hereunder:

"That the said amount of Rs.30,00,000/- shall be paid by the SECOND PART by way of post-dated cheques, which cheques shall be presented for collection to his banker by the First Part, only upon the written intimation to be made by the Second Part, as and when funds are be made available in the relevant bank account of the Second Part."

Undisputedly, the basis for issue of the cheques is the agreement referred *supra*. According to the allegations made in the complaint, letter dated 12-08-2015 was issued by respondent No. 1 to the petitioner informing about the intention of the former to deposit the cheques for collection. The contention that no notice in compliance of condition No. 2 of the agreement was issued is therefore without any basis. In any view of the matter, to constitute the offence punishable under Section 138 of the Act, the cause of action is the date on which the accused received notice issued in compliance of clause (b) of proviso to Section 138 of the Act. In the case on hand, the petitioner received the notice issued by respondent No. 1 and also issued reply but failed to pay the amount within the time specified in the notice. On the other hand, even after filing the complaint, the petitioner did not inform respondent No. 1 or the Court below about arrangement of funds to meet the amount covered by the cheques. Therefore, the contention that no notice was issued before presentation of the cheques is not a ground to quash the proceedings since it is a separate agreement though it

is part of the complaint. Since the petitioner failed to pay the amount covered by the cheques even after issuing notice or on appearance before the Court below, the proceedings cannot be quashed. Hence, I find no ground to quash the proceedings at this stage. However, it is left open to the petitioner to raise this contention before the Court below during trial.

5. With the above observation, the criminal petition is dismissed at the stage of admission. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 11-12-2017.
JSK

M.SATYANARAYANA MURTHY, J.

