THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.162 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in C.C.No.62 of 2017 on the file of I Special Magistrate at Malkajgiri, Ranga Reddy District, for the offence punishable under Section 138 of Negotiable Instruments Act (N.I. Act).

The second respondent filed a private complaint under Section 200 Cr.P.C for the offence punishable under Section 138 of N.I. Act against the petitioners herein, alleging that the second respondent was running Iron and Steel business by name and style of M/s Sri Nidhi Steel Traders and the accused were doing construction business in the name and style of M/s Sri Venkata Aishwarya Constructions, rep. by its Managing Partner. It is the case that, in the day-to-day business, the second respondent supplied Steel to the petitioners vide Invoice No.88 for Rs.9,26,750/- dated 15.04.2014 and another Invoice No.89 for Rs.2,96,790/- dated 22.05.2014 totalling to Rs.12,20,540/- with an assurance from the petitioners, that they will repay the amount to the second respondent within one month.

Thereafter, the petitioners did not discharge the debt due to the second respondent, but issued two cheques bearing No.004627 dated 09.12.2016 forn Rs.9,26,750/- drawn on Bank of Maharashtra, Seetha Rama Raju Nagar, Nizampet Road Branch, Kukatpally, Hyderabad and another cheque bearing No.200285 dated 09.12.2016 for Rs.3,00,000/- drawn on ICICI Bank, Kukatpally Branch, Hyderabad in favour of Sri Nidhi Traders, towards discharge of legally enforceable debt or liability. But, on presentation of said cheques with the second respondent's banker i.e. Navabharat Co-operative Urban Bank Limited, A.S. Rao nagar, Branch, Hyderabad, for collection the same were dishonoured and returned with an endorsement "funds insufficient" and "account blocked" vide cheque return memo dated 15.12.2016. Thereupon, the second respondent, in compliance of Clause (b) of proviso to Section 138 of N.I. Act, issued legal notice to the petitioners on 31.12.2016 calling upon the petitioners to pay the amount covered by the cheques returned unpaid within fifteen days from the date of receipt of legal notice and the receipt of notice was acknowledged on 03.01.2017 and 18.01.2017. Inspite of receiving notices, the petitioners neither repaid the amount nor issued any reply to the notice. Hence, the second respondent filed complaint referred supra.

The present petition is filed under Section 482 Cr.P.C on three grounds. (i) The cheques were not issued towards discharge of legally enforceable debt (ii) The credit invoices were not placed on record along with the complaint and (iii) the other partners of the firm were not impleaded as accused in the complaint.

The petitioners contention is that, cheques were not issued towards legally enforceable debt. When the petitioners admitted issue of cheque, the presumption under Section 139 of N.I. would come into operation and in view of the statutory presumption, the cheques are presumed to have been issued towards discharge of whole or part of the legally enforceable debt or liability. Such presumption can be rebutted by adducing independent evidence or eliciting anything in the cross-examination of the plaint witnesses only during trial. But, at this stage, it is difficult to quash the proceedings on the said ground, in view of the statutory presumption under Section 139 of N.I. Act.

A similar question came up before the Apex Court in "***Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.***[1]" 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

[1] AIR 2016 SC 4363

quashed.

In view of the law declared by the Supreme Court in the above judgment, a disputed question of fact, cannot be decided while deciding a petition under Section 482 Cr.P.C.

The other contention raised by the learned counsel for the petitioners is that, the credit invoices were not placed on record. But, this contention is not acceptable, for the reason that, the requirement to establish the offences punishable under Section 138 of N.I.Act is issue of cheque, dishonour on its presentation for collection and compliance of Clause (b) of proviso to Section 138 of N.I. Act, which gave rise to cause of action for filing the complaint for the offences punishable under Section 138 of N.I. Act. Therefore, non-production of credit invoices before the Magistrate is not a ground to quash the proceedings.

The third ground urged before this Court is that the other partners of the petitioners firm were not impleaded as accused. As per Section 138 of N.I. Act, the drawer or maker of the instrument, as defined under Section 7 of N.I. Act, alone is liable to be prosecuted, subject to Section 141 of N.I. Act.

Here, in this case, the first petitioner represented by the second petitioner-Managing Partner of the firm allegedly issued those two cheques and thereby, he is the drawer, as defined under Section 7 of N.I. Act. A notice was served on the drawer i.e the petitioners herein, as required under Clause (b) of proviso to Section 138 of N.I. Act. Therefore, failure to implead the other partners of the firm who are not participating in the day-to-day affairs of the firm, is not a ground to quash the proceedings in view of Section 141 of N.I. Act.

Therefore, I find no ground to quash the proceedings at this stage, since most of the contentions raised before this Court are disputed questions of fact, which can be decided only at the end of trial. Consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed at the admission stage.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:05.01.2018

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