

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.118 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.41 of 2016, pending on the file of Judicial Magistrate of First Class, Kanigiri, Prakasam District, for the offences punishable under Section 420 IPC and Section 138 read with 142 of the Negotiable Instruments Act (for short 'the Act').

2. The 2nd respondent filed complaint against the petitioner for the above offences alleging that on 28.09.2015, cheque bearing No.000038 for Rs.3,85,000/-, cheque bearing No.000039 for Rs.4,71,000/- and cheque bearing No.000040 for Rs.2,74,000/- were issued in lieu of discharge of debt due to the 2nd respondent, drawn on Bank of India, Gandhinagar Branch, Vijayawada. On 05.12.2015, when the above three cheques were presented in Andhra Bank, Seetharampuram Branch, H.M.Padu Mandal of Prakasam District for collection, they were returned on 15.12.2015 with an endorsement "account closed and no amount is available" to the credit of the account of the petitioner and issued separate memos. On 06.01.2016, the 2nd respondent got issued a notice in compliance of Clause (b) of proviso to Section 138 of the Act calling upon the petitioner to pay the amount covered by the cheques returned unpaid within 15 days from the date of receipt of notice and the same was returned with an endorsement that 'the addressee left without instructions'.

3. The contention before this Court is that the notice allegedly got issued by the 1st respondent in compliance of Clause (b) of proviso to Section 138 of the Act was not served as it was admittedly returned. Therefore, in the absence of any notice served on the petitioner, no cause of action arises and as such, the complaint is liable to be quashed. The second contention is that the cheques were not issued towards discharge of legally enforceable debt or liability. On the strength of these two grounds, learned counsel for the petitioner sought quashment of C.C.No.41 of 2016.

4. The first and foremost ground raised before this Court is non service of notice issued in compliance of Clause (b) of proviso to Section 138 of the Act, which gives rise to file complaint.

5. Undisputedly, notice was sent to the address of the petitioner, but it was returned un-served on the ground that addressee left without instructions, therefore, returned to Centre. The petitioner is not denying the address mentioned on the registered cover, but contending that it was not served. When notice by registered post was sent, the presumption under Section 27 of the General Clauses Act will apply and the notice is deemed to have been served, in view of the law declared by the Apex Court in **C.C. Alavihaji v. Palapetty Muhammed and Another**¹. Though the presumption under Section 27 of the General Clauses Act is rebuttable, until

¹ (2007) 6 SCC 555

statutory presumption is dispelled or rebutted, the Court has to draw presumption that notice was served *prima facie*. By applying principle laid down in the decision referred supra, the notice is deemed to be served, till it is rebutted.

6. The second contention raised by learned counsel for the petitioner is that the cheques were not issued towards discharge of legally enforceable debt. When the petitioner admitted issuance of cheques while contending that they were not issued towards discharge of legally enforceable debt or liability, it is for the petitioner to prove that they were not issued towards discharge of legally enforceable debt or liability since it is a question of fact to be decided only during trial. Apart from that, the statutory presumption under Section 139 of the Act is in favour of the holder of the cheques i.e. the 2nd respondent. Though the presumption under Section 139 of the Act is rebuttable, until it is rebutted, in view of the presumption, the cheques are deemed to have been issued towards discharge of legally enforceable debt or liability. This question is squarely covered by the judgment of the Apex Court in **Rampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.**², wherein it is made 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

² 2016 (2) ALD (CrL.) 809 (SC)

adverting to Section 139 of Negotiable Instruments Act. In view of the law declared by the Apex Court in the above two judgments, it is difficult for this Court to quash the proceedings at this stage since the presumption under Section 27 of the General Clauses Act and Section 139 of the Act is in favour of the 2nd respondent.

7. Though the petition runs into several pages, learned counsel for the petitioner limited his submission only on two aspects referred supra. Therefore, I need not advert to the other contentions raised in the petition and answer those contentions. In view of the above foregoing discussion, I find no grounds to quash the proceedings at this stage and the criminal petition is liable to be dismissed at the stage of admission.

8. Accordingly, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

05.01.2018
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