

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.1725 OF 2018

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.162 of 2016 on the file of IV Additional Judicial First Class Magistrate at Warangal, registered for the offence punishable under Sections 138 of Negotiable Instruments Act (for short "N.I.Act.") and under Section 420 of Indian Penal Code (for short "I.P.C.").

The respondent No.2 filed private complaint under Section 200 of Cr.P.C. alleging that the petitioner/accused along with his wife Gundu Sudharani being the owners of the Petrol pump jointly let out the same to the complainant and taken huge amount as deposit and also taken huge amount from the petrol pump during the lease period by inducing him, as the same will be repaid along with interest, but avoided to repay the same. On demand by the complainant, the petitioner while admitting the liability to pay an amount of Rs.19,00,000/- to the complainant executed a demand promissory note agreeing to pay the said amount along with interest at 2% per month on 30.05.2012, but did not discharge the debt as promised.

Later, on demand, the petitioner issued a cheque bearing No.222199 dated 20.11.2013 for Rs.19,00,000/- drawn on Axis Bank Limited, Warangal Branch and when the complainant presented the same for collection in his account at State Bank of Hyderabad, Nakkalagutta Branch on 26.11.2013 and when the same was sent for collection, the same was returned on 27.11.2013 with an endorsement as "the payment stopped by the drawer" and the same

was informed to the petitioner/accused on 02.12.2013, thereupon legal notice was issued calling upon the petitioner to pay the amount covered by dishonoured cheque, but the notice was returned unclaimed. Therefore, the complainant filed complaint.

The only ground raised before this Court is that the petitioner did not comply the mandatory requirement specified in proviso (b) to Section 138 of N.I. Act,

The complainant/respondent No.2 obtained promissory note from the petitioner for Rs.19,00,000/- and towards discharge of debt, a cheque bearing No.222199 for Rs.19,00,000/- was issued, on presentation of the said cheque, the same was returned with an endorsement as "the payment stopped by the drawer". Thereupon, the complainant issued notice dated 28.12.2013 in compliance of proviso (b) to Section 138 of N.I. Act calling upon the petitioner to pay the due amount within 15 days from the date of receipt of notice. But the same was returned un-claimed. Therefore, the presumption under Section 27 of the General Clauses Act shall be drawn that there is due service of notice when the registered address of the petitioner is not disputed in the present petition. Therefore, the ground urged by the petitioner is not sufficient to quash the proceedings as sought for.

In the result, the petition is dismissed while permitting the petitioner to urge all the available grounds before the Court below. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

24.08.2018
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