HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.3272 OF 2018

ORDER:

The criminal petition is filed under Section 482 Cr.P.C. to quash the complaint in C.C.No.126 of 2017 pending on the file of XXII Special Magistrate, Erramanzil, Hyderabad, registered for the offence punishable under Section138 of the Negotiable Instruments Act (for short 'the Act').

The petitioners are A1 to A3 and the 2nd respondent is the complainant.

The 2nd respondent filed private complaint under Section 200 Cr.P.C. for the above offence alleging that the cheque bearing No.003225, dated 15.07.2016 for Rs.2,60,000/- and cheque bearing No003228, dated 24.07.2016 for Rs.2,72,440/- drawn on Bank of Baroda, Daman Branch issued by the petitioners towards discharge of part of legally enforceable debt i.e. Rs.60,31,949/- and on receipt of the instructions from the petitioners i.e. A2 and A3, the said cheques were presented with the bank for collection, but the said cheques were returned for the reason that 'payment stopped by the drawer' vide cheque return memos dated 14.10.2016. Thereupon, notice dated 31.10.2016 was issued by registered post calling upon the petitioners to pay the cheques amount and the said notice was acknowledged by the petitioners, but neither they paid the amount demanded nor gave any reply to the notice.

The present petition is filed on the ground that the notice issued calling upon the petitioners was not in compliance of Section 138(b) of the Act, it is short of legal requirement i.e. amount demanded in the notice was not amount covered by dishonoured cheque and it is Rs.4,82,440/- only, though the amount covered by both the cheques was Rs.2,60,000/- plus Rs.2,72,440/-= Rs.5,32,440/- and requested to quash the proceedings.

It is an undisputed fact that notice dated 31.10.2016 was issued calling upon the petitioners to pay a sum of RS.4,82,440/-, the last para of the notice reads as under:

> ***"So, I hereby call upon you all on behalf of our clients to pay the said amount of Rs.4,82,440/- within 15 days from the date of receipt of this notice, failing which our clients will be constrained to take appropriate legal action against you all, more particularly criminal action under Section 138 of the Negotiable Instruments Act, making you all liable for costs and consequences arising thereof."***

From the para of the notice extracted above, the 2nd respondent called upon the petitioners to pay only Rs.4,82,440/- within 15 days from the date of receipt of notice with a threatened action for the offence punishable under Section 138 of the Act. But in para 2 of the same notice, it is alleged that the 1st petitioner-firm issued two cheques bearing Nos.003225, dated 15.07.2016 for Rs.2,60,000/- and 003228, dated 24.07.2016 for Rs.2,72,440/- drawn on Bank of Baroda, Daman Branch towards part payment. The total amount covered by two dishonoured cheques comes to Rs.5,32,440/-. Instead of demanding payment of amount covered by dishonoured cheques for the reason payment stopped by the drawer as per the cheque return memos, the 2nd respondent demanded for payment of Rs.4,82,440/- only, which is less than the amount covered by two cheques. It appears from the record that there is a calculation mistake in the last para of the demand notice, but still the calculation mistake is sufficient to exercise power under Section 482 Cr.P.C. to quash the proceedings.

Learned counsel for the petitioners mainly relied on in **Suman Sethi v Ajay K.Churiwal and another[1],** the Apex Court had an occasion to decide the identical issue. But in para 8 of the judgment, the Apex Court observed that it is well settled principle of law that the notice has to be read

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[1] (2000)2 SCC 380

as a whole. In the notice, demand has to be made for the "said amount" i.e. cheque amount. If no such demand is made the notice no doubt would fall .short of its legal requirement. Where in addition to "said amount" there is also a claim by way of interest, cost etc. whether the notice is bad would depend on the language of the notice. If in a notice while giving the break up of the claim, the cheque amount, interest, damages etc. are separately specified, other such claims for interest, cost etc. would be superfluous and these additional claims would he severable and will not invalidate the notice. If, however, in the notice an omnibus demand is made without specifying what was due under the dishonoured cheque, notice might well fail to meet the legal requirement and may be regarded as bad.

Even if the above principle laid down by the Apex Court is applied to the present facts of the case and reading the entire contents of the notice as well as the amount covered by two cheques is Rs.5,32,440/-, whereas in the last para of the demand notice extracted above, the 2nd respondent called upon the petitioners to pay Rs.4,88,440/- only, which is short of the amount covered by two dishonoured cheques. Though there is a reference about the amount covered by two dishonoured cheques, but the demand is limited to Rs.4,88,440/-. In those circumstances, even by applying the principles laid down in **Suman Sethi's** case referred supra, the notice held to be bad.

In **K.R.Indira v Dr G.Adinarayana,** the Apex Court had an occasion to deal with the consolidated notice and requirement while interpreting the word 'the said amount' and held that a consolidated notice is found to provide sufficient information envisaged by the statutory provision and there was a specific demand for the payment of the sum covered by the cheque dishonoured, mere fact that it was a consolidated notice, and/or that further demands in addition to the statutorily envisaged demand were also found to have been made may not invalidate the same.

In the facts of the above judgment, the cheque amount was different from the alleged loan amount, but also demand was made not of the cheque amount, but of the loan amount only. What is necessary is making of a demand for the amount covered by the bounced cheque which is conspicuously absent in the notice issued in this case. The notice in question is imperfect in this case not because it had any further or additional claims as well but it did not specifically contain any demand for the payment of the cheque amount, the non-compliance with such a demand only being the incriminating circumstances which exposes the drawer for being proceeded against under Section 138 of the Act.

The facts in **TCI Finance Ltd v State of A.P. and another**[2] are almost identical to the present facts of the case, where the cheque for Rs.26,12,742/- were issued and on its presentation it was dishonoured, but demanding amount less than the amount covered by the cheque is short of legal requirement under Section 138b of the Act since the amount covered by the cheque was not claimed. Therefore, the proceedings were quashed by the single Judge of this Court. The same principle was laid down earlier by the single judge of this Court in **Yankay Drugs and Pharmaceuticals Limited, Hyderabad v City Bank, Madras and another**[3] and in **Sikkim State Co-operative Bank Ltd. v Madan Lall Sharma** (Crl.A.No.10 of 2015 dated 15.07.2016).

By applying the law declared by the Courts to the present facts of the case, certainly, the notice issued under Section 138b of the Act, dated 31.10.2016 is not in strict adherence of the mandatory requirement under

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[2] 2004(1) ALD (Crl) 979
[3] 2001(3) ALD 830

Section 138 of the Act and I have no option except to hold that the proceedings are bad for non compliance of mandatory requirement under Section 138b of the Act. Of course, it is purely a clerical or calculation mistake, but this issue is covered by the judgment of this Court referred supra and consequently, the proceedings are liable to be quashed.

In the result, the criminal petition is allowed quashing the proceedings in C.C.No.126 of 2017 pending on the file of XXII Special Magistrate, Erramanzil.

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

M.SATYANARAYANA MURTHY,J

30.07.2018
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