

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.6650 of 2011

ORDER:

This petition is filed, by the petitioners, who are A1 and A2, seeking for quash of the proceedings in C.C.No.212 of 2009 on the file of the Court of IV Additional Munsif Magistrate, Guntur. The offences alleged are under Sections 138 and 142 of the Negotiable Instruments Act, 1881.

2. Heard the counsel for the petitioners and the Public Prosecutor appearing, for the 1st respondent. None appears for the 2nd respondent in spite of notice.

3. The counsel for the petitioners submits that the 2nd respondent has filed another complaint against A1 and A2 and two others, for the offences under Section 406 and 420 r/w 34 IPC, in C.C.No.356 of 2007 before the court of IV Additional Junior Civil Judge, Guntur, and the same ended in conviction by judgment, dated 18.02.2015, against which the petitioners preferred an appeal viz., CrI.A.No.129 of 2015 before the court of I Additional District and Sessions Judge, Guntur. The appellate court by judgment, dated 06.07.2017, reversed the judgment of the trial court.

4. A perusal of the appellate court judgment shows that no finding was given therein with regard to the liability under the cheques. Hence, the same cannot be considered for quashing the proceedings.

5. The counsel relies on a Memorandum of Understanding entered into between the parties, which seem to have been executed on 09.11.2005. He contends that clause(e) specifies that before presenting the cheques, there should be written consent from the 2nd party.

6. But a complete reading of the MOU shows that it concluded by saying that the 1st party is at liberty to take necessary legal action for recovery of entire amount, if any one of the cheques issued for the first six months are dishonoured and not honoured within one month or the 2nd party fails to pay the interest regularly on the given amount. The cheque, in question, was presented in the moth of November, 2006 i.e., after six months.

7. Hence, unless evidence with regard to the Memorandum of Understanding is let in, the real meaning of the terms of the Memorandum of Understanding, which is termed as deed of compromise, cannot be evaluated.

8. The counsel also relies on the judgment of the Apex Court reported in *K.G.Premshanker vs. Inspector of Police and another*¹, to contend that the judgment in the earlier criminal case becomes a basis to quash these proceedings. But this court is unable to accept the said contention as the Supreme Court does not any where, in the judgment, rule as such.

¹ 2002(8) SCC 87

The relevancy of the judgments of the Supreme Court and Criminal Court alone are discussed in the said judgment.

9. The relevancy of the judgment in the earlier criminal case is not in issue before this court. Even by relying on the said judgment, it cannot be said that this complaint is not maintainable.

10. Hence, in view of the above, this court opines that this is not a fit case for quash.

11. With the above observations, the Criminal Petition is dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

September 4, 2018
LMV

T. RAJANI, J

