

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.4912 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.8 of 2018, pending on the file of VI Special Court, Visakhapatnam, registered for the offence punishable under Section 138 of the Negotiable Instruments Act (for short ' the Act').

The 2nd respondent filed private complaint alleging that it is carrying on business of selling steel and iron material and also a dealer and stockist of various supplementary products of Iron and steel belonging to different companies and whereas accused also carrying on same business and in-debited to a tune of Rs.30,42,560/- under eight credit invoices to the 2nd respondent. Towards discharge of the debt due to the 2nd respondent, the petitioner issued cheque bearing No.406947 for a sum of Rs.30,42,560/-, dated 16.04.2016 drawn on State Bank of India, Siripuram Junction Branch, Visakhapatnam towards full and final settlement of amount due. But on its presentation, the same was dishonoured for the reason that 'no such account is available with the bank' and returned the same with cheque return memo dated 20.04.2016. Later a notice dated 08.06.2016 was issued in compliance of Section 138(b) of the Act and the same was acknowledged, but the cheque amount was not paid. Hence, the 2nd respondent filed the complaint.

The main contention of the petitioner before this Court is that when the cheque was dishonoured on the ground 'no such account' it would not attract the offence punishable under the Act.

Learned counsel for the petitioner reiterated the said ground during the arguments and whereas, learned counsel for the 2nd respondent contended that the cheque was issued virtually on the account which was

already closed. Therefore, the allegations made in the complaint would attract commission of offence punishable under Section 138 of the Act.

The 2nd respondent filed complaint under Section 138 of the Act, as the cheque was issued towards discharge of legally enforceable debt and on its presentation, the same was returned on the ground that 'no such account'. Chapter XVII of the Act deals with penalties in case of dishonour of certain cheques for insufficiency of funds in the accounts. Section 138 of the Act made it clear that where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both.

The words used '**account maintained by him with the banker**' assumes importance in this case since cheque bearing No.406947, dated 16.04.2016 allegedly issued by the petitioner drawn on State Bank of India, Siripuram Junction, Visakhapatnam and on its presentation, it was dishonoured on the ground that there was no such account. The account maintained by the petitioner is 160312, but not the account number mentioned in the cheque. Therefore, the cheque was not issued to be drawn on account being maintained by the petitioner with the bank and thereby constitute no offence punishable under Section 138 of the Act. Hence, the proceedings are liable to be quashed. However, this would not

preclude the 2nd respondent to take appropriate action in accordance with law against the petitioner.

Accordingly, the criminal petition is allowed quashing the proceedings in C.C.No.8 of 2018, pending on the file of VI Special Court, Visakhapatnam, registered for the offence punishable under Section 138 of the Act.

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

02.07.2018
kvrm

M.SATYANARAYANA MURTHY,J

