THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.5381 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in C.C.No.541 of 2017 on the file of XVII Metropolitan Magistrate, Cyberabad at Hayathnagar.

The second respondent filed a private complaint under Section 200 Cr.P.C for the offence punishable under Section 138 of Negotiable Instruments Act (for short 'N.I. Act'), alleging that, the petitioner/accused borrowed an amount of Rs. 15,00,000/- on 01-02-2014 from the 2nd respondent/complainant and after receiving the said amount, the petitioner/accused executed a promissory note in favour of the complaint and also promised to pay the same within three months. But, the petitioner did not pay the same and after repeated demands made by the complainant, the petitioner/accused got issued a cheque bearing No.867953, dated 12-2-2015 for Rs. 15,00,000/- drawn on Andhra Bank., B.N.Reddy Nagar branch, towards discharge of the said debt. On presentation of the said cheque by the second respondent/complainant in his bank, the same was dishonoured on 13.02.2018 due to "Insufficient Funds". Thereupon, the complainant got issued legal notice on 11-3-2015 calling upon the petitioner/accused to pay the said cheque amount within 15 days from the date of receipt of the said notice, but the same was returned un-served and thereafter, the complainant filed the present complaint against the petitioner/accused. As the petitioner/accused failed to pay the amount within the prescribed time under Section 138 of N.I. Act, the complainant filed a private complaint for the offence punishable under Section 138 of N.I. Act.

The present criminal petition is filed to quash the proceedings in C.C.No.541 of 2017 on the file of XVII Metropolitan Magistrate, Cyberabad at Hayathnagar, on the ground that the respondent is running a private chit fund business and the petitioner and some others in their locality joined as members of the said chit transaction which was for an amount of Rs.50 lakhs for 50 months. The said chit was commenced on 25.04.2011 and the petitioner had paid upto 24 months, approximately Rs.11,84,700/- to the 2nd respondent. It is submitted that, on 25th month, the petitioner became highest bidder in the auction, demanded the 2nd respondent to pay the chit amount. Then the 2nd respondent demanded to deposit the sale deeds of the property belonging to the petitioner, as a security for the balance chit instalments. Then, the petitioner handed over the sale deed bearing No.4268/2005 and 3071/1998 two blank cheques, two blank promissory notes, one non-judicial stamp and one signed blank white paper as a security. But, he did not pay the said chit amount to the petitioner even after receipt of the above said documents. Therefore, the cheque was not issued towards discharge of legally enforceable debt. It is also contended that, several complaints were filed by several subscribers on the same identical issue. Therefore, the second respondent cannot proceed against this petitioner for the offence punishable under Section 138 of N.I. Act.

During hearing, learned counsel for the petitioner contended that the cheque was not issued towards legally enforceable debt, as there was no subsisting debt, due to the second respondent/complainant as on the date of issue and therefore, proceedings are liable to be quashed by exercising power under Section 482 Cr.P.C.

This Court can exercise power under Section 482 Cr.P.C sparingly in limited circumstances, only when the complaint do not disclose the commission of offence, on its face value or when the complaint is filed only to wreck vengeance or to harass the petitioner without any material. In the facts of the above case, blank signed cheques were issued, but there was no legally enforceable debt and there is no relationship of creditor and debtor subsisting as on the date of issue of the said cheque. In such case, the second respondent is not entitled to proceed against this petitioner to prosecute this petitioner for the offence under Section 138 of N.I. Act.

A similar question came up before the Apex Court in "**Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.**[1]" The facts of the above case are almost identical with regard to the issue of cheque towards discharge of legally enforceable debt, wherein the Apex Court made it 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

[1] AIR 2016 SC 4363

towards the discharge of legal enforceable debt adverting to Section 139 of Negotiable Instruments Act.

In **M/s Modi Cements Limited v. Shri Kuchil Kumar Nandi**[2], the three Judge Bench of the Apex Court held that, once a cheque is issued by a drawer, a presumption under Section 139 must follow and merely because the drawer issued notice to the drawee or to the bank for stoppage of payment it will not preclude an action under Section 138 of the Act by the drawee or the holder of the cheque in due course.

The presumption under Section 139 of Negotiable Instruments Act is a rebuttable presumption and such presumption can be rebutted either by eliciting something in the cross-examination of complainant witnesses or by adducing independent evidence to dispel the statutory presumption contained under Section 139 of Negotiable Instruments Act. But at this stage, in view of the presumption under Section 139 of Negotiable Instruments Act, it is difficult to conclude that the cheques were not issued towards discharge of legally enforceable debt or liability and on that ground the proceedings cannot be quashed.

When the petitioner contended that the blank signed cheques were issued as security for payment of the amount for subsequent instalments of chits, such document is only inchoate stamped document under Section 20 of N.I. Act.

[2] (1998) 3 SCC 249

In **Duggineni Seshagiri Rao v. Kothapalli Venkateswara Rao**[3], the Division Bench of this Court held in para 6 as follows:

> "Four things are necessary for an instrument to be a promissory note: 1) It should be in writing; 2) It should have an unconditional undertaking; 3) It should be signed by the maker; and 4) it should be in favour of certain person or to a bearer.
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> Section 20 makes inchoate stamped instruments legal instruments. The dictionary meaning of 'inchoate' is 'incomplete'. So, incomplete stamped instruments are as good as the instruments mentioned in Section 4 of the Act. Even if one looks to the definition of the 'promissory note' under Section 4, one would find that the requirements for making an instrument a promissory note do not contain the requirement of naming a person, it can be given in favour of a certain person or to bearer of the instrument. That makes it clear that, one who is holding the document is the person who derives rights out of that instrument. In other words, it would mean that the document with first three requirements as stated above, should be delivered to the payee, once it is delivered it becomes a promissory note. Name and other particulars can be filled up even at a later stage. When one reads Section 4 in conjunction with Sections 20 and 42 that is the only interpretation that can be placed on the meaning of 'promissory note' under Section 4 of the Act. Section 20 lays down that when a person signs and delivers to another person a paper stamped in accordance with law relating to negotiable instrument it becomes a negotiable instrument even if it is wholly blank or written with incomplete particulars. Similarly, Section 42 even recognizes instrument issued in the name of fictitious person to be a valid instrument. Although Section 42 relates to bills but it also accepts that an acceptor of a bill of exchange even if it was in drawn in a fictitious name it would create a genuine claim in favour of the holder. Therefore, even if a negotiable instrument is incomplete it would be a legal instrument provided it satisfies the first three conditions.
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> Holder of the instrument becomes a bearer of the instrument."

It was further held as follows:

> "The plaintiff had been able to prove the execution of the document. On the other had, if the document was disputed or doubted the onus was on the defendant to show that the document was a forgery because a presumption is in favour of plaintiff under Section 118 of the Negotiable Instruments Act."

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[3] 2001(6) ALT 95 (D.B.)

In view of the law declared by the Division Bench of the Apex Court in **Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.** (referred supra), and **Duggineni Seshagiri Rao v. Kothapalli Venkateswara Rao** (referred supra) and presumption under Section 139 of N.I. Act, it is difficult to exercise power under Section 482 Cr.P.C to quash the proceedings at this stage, since a disputed question cannot be decided while exercising power under Section 482 Cr.P.C. Hence, I find no ground to quash the proceedings at this stage. However, it is left open to the petitioner to raise all his contentions during trial.

In the result, the criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:08.06.2018

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