

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.6374 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.606 of 2017 pending on the file Additional Junior Civil Judge-cum-Additional Judicial Magistrate of First Class, Kandukuru, Prakasam District, registered for the offence punishable under section 138 of the Negotiable Instruments Act.

The 2nd respondent filed a private complaint alleging that the petitioner borrowed an amount of Rs.15,00,000/- from him on 10.07.2017 at Kovuru Village of Kandukur Mandal in the presence of Chunchu Venkata Rao, s/o Venkata Subbaiah, r/o Kovuru Village and thereafter issued cheque bearing No.476890 for Rs.5,00,000/-, dated 20.07.2017, Cheque bearing No.476891 for Rs.5,00,000/-, dated 10.08.2017 and cheque bearing No.476892 for Rs.5,00,000/- dated 29.08.2017 in favour of the 2nd respondent respectively drawn on Corporation Bank, Mehdipatnam Branch, Hyderabad. When the above cheques were presented on 19.09.2017 for collection in Andhra Bank, Kandukur Branch, they were returned with memo dated 19.09.2017 for the reason, 'insufficient funds'. Thereupon, a notice dated 17.10.2017 calling upon the petitioner to pay amount covered by the dishonoured cheques within 15 days and that the petitioner got issued reply on 23.10.2017, but failed to pay the amount covered by the dishonoured cheque within stipulated time of 30 days from the date of receipt of demand notice.

The present petition is filed on the ground that the complaint is bereft of details as to how the amount was paid and the burden is upon the 2nd respondent that the cheques were issued towards legally enforceable debt and in the absence of such details, the proceedings cannot be

continued. It is also contended that the 2nd respondent did not state as to how he has paid the amount, as any amount more than Rs.2 lakhs by way of cheques or RTGS and no averments were made to that effect and also did not state where he got the amount of Rs.15 lakhs to pay to the petitioner. As such the complaint is liable to be quashed.

It is undisputed fact that the cheques were issued within a short spell i.e. within one month and that according to the contention of the 2nd respondent that the cheques were issued for legally enforceable debt i.e. hand loan. The petitioner admitted issue of cheques, in such a case presumption under Section 139 of the Act that the cheques were issued towards discharge of the legally enforceable debt shall be raised and the burden is upon the petitioner to rebut the presumption under Section 139 of the Act. Therefore, the question of rebuttal will arise only during trial or by producing any evidence, but at this stage, no document is produced.

The Apex Court in ***Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.***¹ had an occasion to deal with the similar situation and 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 towards the discharge of legal enforceable debt in view of presumption under Section 139 of Negotiable Instruments Act.

The other contention raised before this Court is that the complaint is bereft of details as to how the complainant paid the amount more than Rs.2 lakhs must be by way of cheques or RTGS. This requirement is only for the purpose of income tax Act and it is not a ground to quash the proceedings at this stage.

¹ AIR 2016 Supreme Court 4363

Having considered the facts and circumstances of the case including the grounds urged in the petition, I find that none of the grounds are sufficient to quash the proceedings in exercise of power under Section 482 Cr.P.C. and consequently, the criminal petition is liable to be dismissed.

Accordingly, the criminal petition is dismissed at the stage of admission.

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

20.06.2018
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M.SATYANARAYANA MURTHY,J