HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.6619 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.403 of 2018, pending on the file XI Additional Chief Metropolitan Magistrate, Secunderabad, registered for the offence punishable under Section 138 of the Negotiable Instruments Act (for short ' the Act').

The petitioners are A1 and A2 in a private complaint filed by the 1st respondent. It is alleged in the complaint that the 2nd petitioner requested the 1st respondent for hand loan in the last week of March, 2015 and taking into consideration, the urgency and acquaintance with the accused, put in his best efforts and mustered an amount of Rs.35 lakhs from various sources and paid to the accused during 2nd week of April, 2015, which is to be refunded within a period of twenty months by way of monthly installments, which includes flat rate of interest. The accused have also executed promissory note, receipt and other documents in favour of the 1st respondent and also issued cheques towards monthly installments. After receipt of the said amount, the accused have issued cheque bearing No.019240, dated 10.12.2016 for Rs.2,30,000/- drawn on Mercantile Bank, M.G.Road, Secunderabad Branch and on its presentation, it was dishonoured with an endorsement 'funds insufficient' with cheque returned memo dated 22.12.2016. Thereafter, the 1st respondent issued legal notice on 05.01.2017 calling upon the petitioners to pay the amount covered by the dishonoured cheque within stipulated time and having received the notice, legitimate demand of the 1st respondent was not complied. Hence, the complaint.

The first and foremost ground is that the complaint is ambiguous, second ground is that there is any amount of inconsistency in the allegations made in para 1 of the complaint and that the allegations made in the notice dated 28.03.2016, itself indicates that the 1st respondent is indulging in illegal money lending business and cheating the public and that there was no legally enforceable debt, thereby, the proceedings in calendar case are liable to be quashed.

Learned counsel for the petitioners during hearing drawn the attention of this Court to the cheques which were returned/cancelled to establish that the 1st respondent obtained cheques in advance for payment of loan and indulging in illegal money lending business and cheating the public and also drawn the attention of this Court to certain inconsistencies about the dates of advancing loan etc and thereby in view of the inconsistency the very contract itself is illegal and the debt is not enforceable. Therefore, cheque issued by the petitioners is not towards discharge of legally enforceable debt and hence, prayed to quash the proceedings.

The first and foremost contention raised by learned counsel for the petitioners is that there is inconsistency in various paras of the complaint and it ambiguous. No doubt, the complaint did not disclose the dates of petitioners approaching the 1st respondent and lending amount from various sources in the last week of March, 2015 and paid the same in the 2nd week of April, 2015 to the petitioners, except mentioning the same the other details lack. Lending amount from the 1st respondent and issuing cheque was not in dispute. The petitioners themselves produced returned cheques stating that they paid the cheque amount in cash and took return of those cheques. Therefore, the very transaction of lending amount is not in dispute. The ambiguity in disclosing the dates is of inconsequential at this stage to decide the liability of the petitioners. Therefore, the ambiguity in mentioning the dates is not a ground since the petitioners themselves admitted about the transaction and taking back those cheques on payment of various installments in cash and produced those cheques before the Court, this itself establish that there was a transaction of debt between the petitioners and the 1st respondent. As such on this ground the complaint cannot be quashed.

Learned counsel for the petitioners pointed out some inconsistencies with regard to the rate of interest. There is vague reference about payment of interest on flat rate without specifying the rate of interest, which itself is not a ground to quash the proceedings.

Moreover, in the notice dated 28.03.2016, the 1st respondent demanded for payment of amount covered by dishonoured cheque within the specified time together with interest at 24% per annum. But this question regarding rate of interest has to be decided only during trial as it is a disputed question of fact.

The other contention raised before this Court is that the petitioners indulged in illegal money lending business and there is a vague allegation in the notice dated 28.03.2016 about lending of Rs.75 lakhs from various sources and paying Rs.1,36,20,000/- on various dates without any license under Telangana Money Lenders Act. Whether lending amount without obtaining licence would constitute money lending business or not is a question to be decided as defined under the Telangana Money Lenders Act. Unless an opportunity was given the 1st respondent to produce the licence, if any obtained and he was carrying on such business or not, the proceedings cannot be quashed.

Moreover, the other ground urged before this Court is that there was no legally enforceable debt, there is presumption under Section 139 of the Act that the cheque was issued towards discharge of either the full or part of legally enforceable debt, it is proved that cheque was not issued towards legally enforceable debt and this question is no more *res integra* in view of law declared by the Apex Court in **Rampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.**[1]**,** wherein it is made 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, adverting to Section 139 of Negotiable Instruments Act. By applying the above principle, the proceedings cannot be quashed that there was no legally enforceable debt as there was a presumption under Section 139 of the Act, which is rebutable by adducing independent evidence or by eliciting something in the cross examination of prosecution witnesses. Until it is rebutted, the presumption is in favour of the complainant that cheque was issued towards legally enforceable debt. Therefore, such disputed question cannot be decided in a petition filed under Section 482 Cr.P.C. As such the criminal petition is liable to be dismissed.

Accordingly, the criminal petition is dismissed.

Pending miscellaneous petitions, if any, in this Criminal Petition shall stand dismissed in consequence.

M.SATYANARAYANA MURTHY, J

Date: 17.07.2018.
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[1] 2016 (2) ALD (Crl.) 809 (SC)