

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.6707 of 2018

ORDER

This petition is filed under Section 482 Cr.P.C., to quash the proceedings in C.C.No.231 of 2017 on the file of Special Magistrate-IV, Visakhapatnam, registered for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act), against the petitioner/accused.

2. The second respondent herein is a chit fund company having its branches all over the State of Telangana and one such branch is situated at Hanumakonda, Warangal District. The petitioner is a subscriber of the chit and he allegedly committed default in paying monthly instalments. Therefore, the matter was referred to the Registrar of Chits/Arbitrator at Warangal in Arbitration No.363 of 2014 and an award was passed for an amount of Rs.2,88,775/- with accrued interest and costs. Later, the accused approached the complainant for amicable settlement. Then, the Head Office of the complainant agreed to withdraw the case for an amount of Rs.2,88,775/- out of interest and costs in the award. Thus, the accused has issued a cheque bearing No.667912 drawn on ICICI Bank Limited, Dilsukh Nagar Branch, Hyderabad, for an amount of Rs.2,88,775/- on 15.02.2016. When the complainant presented the said cheque on 17.02.2016, it was dishonoured with an endorsement 'funds insufficient' on 23.02.2016. Later, a notice was issued calling upon the petitioner to pay the amount covered by the

dishonoured cheque, but he did not pay the amount. Hence, the second respondent filed the present complaint.

3. The present petition is filed on the ground that the petitioner did not issue any cheque to the second respondent and that the Court at Visakhapatnam has no territorial jurisdiction to try the case and requested this Court to quash the proceedings against him.

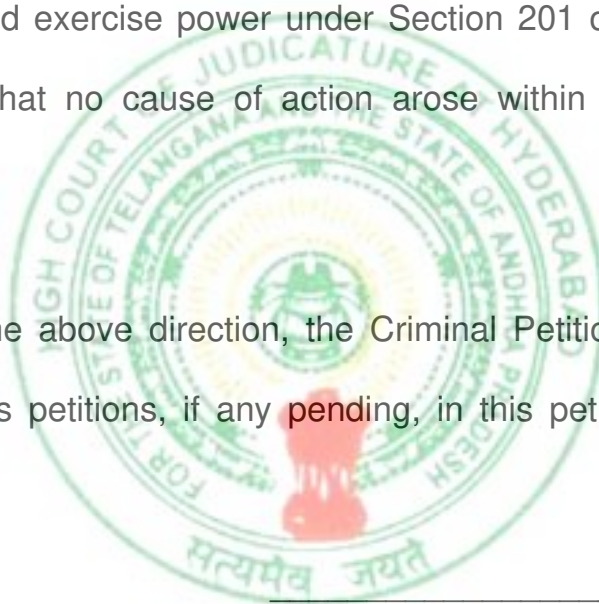
4. It is the specific case from the beginning that the petitioner issued a cheque towards settlement of the award amount passed by the Registrar/Arbitrator in Arbitration No.363 of 2014 for an amount of Rs.2,88,775/- and when the said cheque was presented, it was dishonoured on account of insufficiency of funds to the credit of the account of petitioner along with a cheque return memo. When the cheque was issued by the petitioner, there is a presumption under Section 139 of the Act and the contention of the petitioner that he did not issue cheque at any time is a disputed question of fact that can only be decided during trial and not at this stage and on the ground that he never issued any cheque, the proceedings cannot be quashed.

5. The other ground urged before this Court is that the Special Magistrate-IV, Visakhapatnam, has no territorial jurisdiction since the cheque was issued within the jurisdictional limits of Judicial Magistrate of First Class, Hanumakonda.

6. No doubt, a private complaint is filed under Section 200 of Cr.P.C. and in case, the Magistrate found that the Court is

incompetent to take cognizance of the offence, a procedure is prescribed under Section 201 of Cr.P.C., which permits the Magistrate, who is not competent to take cognizance of the offence, shall, if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect and if the complaint is not in writing, direct the complainant to the proper Court. But, on the ground of lack of territorial jurisdiction, the proceedings cannot be quashed. However, the Magistrate is directed to decide the territorial jurisdiction to try the offence punishable under Section 138 of the Act and exercise power under Section 201 of Cr.P.C., if the Court finds that no cause of action arose within its jurisdictional limits.

7. With the above direction, the Criminal Petition is dismissed. Miscellaneous petitions, if any pending, in this petition shall stand dismissed.



M. SATYANARAYANA MURTHY, J

28th June, 2018

sj