

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.6752 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.424 of 2017, pending on the file of III Additional Judicial First Class Magistrate, Rajamahendravaram, East Godavari District, registered for the offence punishable under Section 138 of the Negotiable Instruments Act.

The petitioner is A1. The 2nd respondent is Kapil Chits (Kosta) Private Limited carrying on chit fund business. The petitioner joined in Chit series No. FRJT)4G-04 for value of Rs.2 lakhs, payable in monthly installments @ Rs.4,000/- for 50 months. The petitioner being subscriber of the chit participated in the bid and became highest bidder in the auction held on 29.08.2013 and declared as prized subscriber, agreeing to forego an amount of Rs.80,000/- out of Rs. 2 lakhs. The petitioner issued a cheque bearing No.006541 on 12.05.2017 drawn on the South Indian Bank Limited, Rajamahendravaram for Rs.1,00,000/- in favour of the 2nd respondent towards part satisfaction of the chit amount and when the said cheque was presented before Karur Vysya Bank, Lakshmivarapupeta, Rajahmundry, the same was returned with an endorsement 'funds insufficient' along with cheque return memo dated 17.06.2017. Thereupon, issued notice on 06.07.2017 calling upon the petitioner to pay the amount covered by the dishonoured cheque and receipt of the notice was acknowledged, but the petitioner did not pay the amount covered by the dishonoured cheque.

The main contention of the petitioner before this Court is that he admittedly subscriber of the chit, but at the time of payment of prize amount, the 2nd respondent obtained blank signed cheques as security for

payment of future monthly subscriptions and a notice was also issued to the 2nd respondent by the petitioner on 23.01.2014 demanding the 2nd respondent to pay the prize amount and for return of the cheques etc. Reply notice was got issued by the 2nd respondent on 04.02.2014 denying the issue of cheques by the date of issue of reply. Whereas, the cheque was issued on 12.05.2017 and notice was issued on 04.02.2014. Merely because when issue of cheque dated 04.02.2014 was denied, it is difficult to conclude at this stage that the cheque was not issued towards discharge of either whole or part of enforceable debt or liability. The same is purely a disputed question of fact and it is to be decided only at the end of trial in view of the law declared by the Apex Court in ***Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.***¹ 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 legally enforceable debt in view of presumption under Section 139 of Negotiable Instruments Act.

The contention of the petitioner cannot be accepted and that too there is a presumption under Section 139 of the Act, which is rebuttable and such presumption can be rebutted either by eliciting anything 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 cheque was not issued towards discharge of legally enforceable debt or liability and on that ground the proceedings cannot be quashed. However, the observations made herein will have no bearing in disposal of the calendar case and it is left open to the petitioner to raise all the

¹ AIR 2016 Supreme Court 4363

contentions in the calendar case itself and on that the Magistrate is directed to consider and dispose of the case in accordance with law.

Accordingly, the criminal petition is dismissed.

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

M.SATYANARAYANA MURTHY,J

29.06.2018
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