HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.6861 of 2018

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.125 of 2017 pending on the file of the Court of II Metropolitan Magistrate Cyberabad at Malkajgiri for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act").

2. The petitioners are accused Nos.1 and 2 and the 2nd respondent is the complainant. The 2nd respondent filed private complaint under Section 200 Cr.P.C. against these petitioners for the offence punishable under Section 138 of the Act. Petitioner No.1 is M/s.PSR Constructions, represented by its Partner/Authorised signatory P.Srinivas, who is arrayed as accused No.2/petitioner No.2. The case of the 2nd respondent is that petitioners borrowed an amount of Rupees One crore Twenty lakhs from the complainant and executed a promissory note in favour of the complainant on 10.12.2011 and as the 2nd respondent failed to repay the amount, the complainant filed O.S.No.1615 of 2013 and after full-fledged trial, the suit was decreed on 22.07.2016 for a sum of Rs.95 lakhs together with subsequent interest @ 9% per annum. After passing the decree the complainant waited for a considerable time expecting that the decree debt will be discharged by the petitioners herein. When the complainant informed A2 that he is going to initiate execution proceedings for attachment of the immovable property,

the 2nd petitioner requested the complainant not to file execution petition and accepted to pay Rs.20 lakhs towards part payment of the decretal amount in the above suit and got issued the cheques belonging to A1 as a Managing Partner, duly signed by authorised signatory, vide cheque bearing No.106229 dated 28.06.2017 for Rs.5 lakhs; cheque bearing No.106231 dated 28.06.2017 for Rs.5 lakhs; cheque bearing No.106239 dated 28.06.2017 for Rs.10 lakhs. Thus, in all, the petitioners issued three cheques for Rs.20 lakhs towards discharge of the part of the decretal amount due under the decree in the aforesaid suit, drawn on Development Credit Bank Limited, Habsiguda Branch, Hyderabad. The cheques were issued by A2 being an authorised signatory of A1. On presentation of the cheques on 28.06.2017 for collection at HDFC Bank, Sainikpuri Branch, the cheques were returned by the payee bank with a cheque return memo dated 04.07.2017 with a reason "funds insufficient" to the credit of the account of the petitioners. Thereupon, the 2nd respondent personally contacted the 2nd petitioner and explained the same, but the 2nd petitioner did not respond properly. After receipt of the bankers cheque return memos, the 2nd respondent got issued legal notice to the 2nd petitioner on 15.07.2017. The notices, which were sent to the 2nd petitioner's address, were returned with an endorsement, 'no such person at his house number', but the address mentioned on the registered covers is the address where the petitioner No.2 is residing. As the petitioners failed to pay the amount covered by dishonoured cheques within the stipulated time, the 2nd respondent filed complaint for the offence punishable under Section 138 of N.I.Act.

3. The present petition is filed on the ground that when a decree was passed in O.S.No.1615 of 2013, which is the subject matter of C.R.P.No.2170 of 2017, issuance of cheques towards discharge of part of the decree debt does not arise and that too when a specific procedure is contemplated under Order XXI Rules 1 and 2 for payment of money due under the decree into the court or outside the court and without following such procedure, filing of a complaint is unsustainable. It is also contended that the cheques admittedly were not issued towards discharge of legally enforceable debt or liability either wholly or part but the cheques were with the 2nd respondent since long time and utilised the unfilled cheques duly signed by the 2nd petitioner and, therefore, there was no legally enforceable debt and consequently, the proceedings against these petitioners are liable to be quashed and prayed to quash the proceedings.

4. During hearing, the learned counsel for the petitioners would draw the attention of this court to Order XXI Rules 1 and 2 of CPC to demonstrate that the 2nd respondent has to follow the procedure as contemplated thereunder otherwise the complaint is not maintainable and he also contended that when the petitioners are contending that the cheques were not issued towards discharge of legally enforceable debt the proceedings against these petitioners are liable to be quashed by exercising

power under Section 482 Cr.P.C. and requested to quash the proceedings.

5. The 2nd respondent admittedly obtained a decree in O.S.No.1615 of 2013 on the file of the Principal District Judge, L.B.Nagar, Hyderabad and the decree has attained finalty but the counsel for the petitioners contended that a civil revision petition viz., C.R.P.No.2170 of 2017 is pending before the court. But it is not known whether any interim stay was granted by this court or not and no material is placed before this court to substantiate the contention that the CRP is pending before this court. Therefore, on the ground of pendency of CRP, the proceedings against these petitioners cannot be quashed.

6. The main contention before this court is that the payment shall be made as per the procedure prescribed under Order XXI Rules 1 and 2 of CPC but not by issuing cheques. Order XXI Rule 1 deals with mode of payment of money under decree and Rule 2 deals with payment out of court to a decree holder. During pendency of the EP, if any, filed before the court for realization of the decree debt by instituting execution proceedings, the procedure contemplated under Rule 1 is required to be followed and for certifying the payment made outside the court to the decree holder the procedure contemplated under Rule 2 is required to be followed either by the decree holder or judgment debtor. Unless the procedure contemplated under Rule 1 of Order XXI is followed, the court cannot record satisfaction of the decree in a pending EP or any

payment made outside the court to the decree holder unless such payment or adjustment which has been certified or recorded, shall not be recognized in view of sub rule 3 of Rule 2. So, the two Rules deals with two different situations. The first Rule deals with payment during pendency of EP and the second Rule deals with the payment outside the court to the decree holder.

7. At this stage, the counsel for the petitioners interfered and submitted that Rule 1 also deals with payment outside the court but I am unable to accept this contention. However, it is not germane to decide the real controversy between the parties in the present case. Admittedly, no execution proceedings are initiated for realization of the decree debt in O.S.No.1615 of 2013, dated 22.07.2016. Thereby, the question of following the procedure contemplated under Order XXI Rule 1 does not arise. So far as the procedure contemplated under Rule 2 is concerned, the amount, if any, realized when cheques were issued, then the question of following procedure under Order XXI Rule 1 will arise. Even otherwise it is for the decree holder or judgment debtor to file appropriate application within the time prescribed from the date of such payment to make a request to the executing court or the original court to record full or part satisfaction of the decree.

8. In the case on hand, the cheque amount was not realized in view of dishonour of the cheque due to insufficiency of funds to the credit of the account of these petitioners. In such a case,

the question of following procedure under Order XXI Rule 2 does not arise. Therefore, the contention of the petitioners that failure to follow the procedure under Order XXI Rules 1 and 2 by the 2nd respondent/complainant vitiates the entire proceedings, is without any substance and therefore on this ground the proceedings in C.C. cannot be quashed.

9. Yet, another contention raised by the counsel for the petitioners is that the cheques are with the 2nd respondent and they were utilized by the 2nd respondent and filed the complaint. The cheques were duly signed by the 2nd respondent as an authorized signatory of the 1st respondent. But the cheques were issued towards discharge of the part of the legally enforceable debt in O.S.No.1615 of 2013. Whether the cheques were issued towards discharge of legally enforceable debt or not is a question of fact to be decided only after full-fledged trial in the CC and this court cannot record any finding that the cheques were not issued for discharge of legally enforceable debt. The truth in the allegations made in the complaint cannot be looked into while deciding an application filed under Section 482 of Cr.P.C. to quash the proceedings in view of the judgment of the Apex Court rendered in "*Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.*[1] In view of the law declared by the apex court, whether the cheques were issued towards legally enforceable debt or not is a question of fact to be decided only at the end of trial but at this

[1] AIR 2016 Supreme Court 4363

stage the court cannot exercise such power to quash the proceedings.

10. On the other hand, it is the contention of the petitioners that the blank cheques duly signed by the 2nd petitioner were obtained by the 2nd respondent long prior to passing of decree and utilised those cheques. Even if the said contention is accepted as true, as the cheque is an inchoate document, under Section 20 of N.I.Act the person in possession of such instrument is entitled to fill the instrument and utilise, since the intention of the parties is to utilise these cheques for lawful purpose, in view of the law declared by the Division Bench of this court in *Duggineni Seshagiri Rao Vs. Kothapalli Venkateswara Rao*[2]. Therefore, this contention also holds no substance in view of the law declared by the Division Bench of this court.

11. In view of the foregoing discussion, I find no merits in the criminal petition to exercise power under Section 482 Cr.P.C. to quash the proceedings.

12. Accordingly, the Criminal Petition is dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed.

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JUSTICE M.SATYANARAYANA MURTHY

July 3, 2018

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[2] 2001(6) ALT 95 (D.B.)