HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.8354 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.70 of 2017 pending on the file of IV Special Magistrate, Visakhapatnam, registered for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act').

The petitioner is the accused and the 2nd respondent is the *de facto* complainant.

The 2nd respondent filed complaint under Section 200 Cr.P.C. for the offence punishable under Section 138 of the Act alleging that the petitioner borrowed an amount of Rs.40 lakhs on 14.02.2013 agreeing to repay the same together with interest @ Rs.2/- per month per hundred, on demand either to the complainant or his order and also executed promissory note to that effect, on the even date. Despite repeated demands, the petitioner did not repay the amount either principal or interest. Thereafter, in partial discharge of debt or liability, the petitioner issued cheque bearing No.184396, dated 27.04.2015 for Rs.25 lakhs drawn on ICICI Bank, Visakhapatnam Main Branch, Visakhapantam and on presentation of the said cheque, the same was returned with an endorsement 'funds insufficient' and thereby legal notice dated 19.05.2015 incompliance of Section 138 proviso (b) of the Act was issued calling upon the petitioner to pay the amount covered by the returned unpaid cheque and the receipt of notice was acknowledged, but no amount was paid.

The present petition is filed on two grounds. The first ground is that the notice issued under Section 138 proviso (b) of the Act is not incompliance of requirement and the second ground is that the allegations made in the complaint are not disclosed the exact details of amount and the dates of presentation of cheque etc. Hence, the complaint is liable to be quashed.

Learned counsel for the petitioner at the stage of admission reiterated the contentions of the petition while drawing attention of this Court to the notice dated 19.05.2015 issued incompliance of Section 138 proviso (b) of the Act where the 2nd respondent claimed other amount also besides cheque amount and also drawn the attention of this Court to the details mentioned in the complaint filed for the offence punishable under Section 138 of the Act, which does not disclose any details of date of presentation etc and requested to quash the proceedings.

The first and foremost contention urged before this Court is that the notice dated 19.05.2015 incompliance of Section 138 proviso (b) of the Act is invalid, since the 2nd respondent also claimed other amount due under the promissory note along with claiming amount of Rs.25 lakhs to pay within 15 days covered by unpaid cheque and placed judgment of the Apex Court in **K.R.Indira v Dr G.Adinarayana**[1] in support of his contention.

A bare look into the allegation in the notice more particularly at para 3, the petitioner was called upon to pay amount of Rs.25 lakhs within 15 days after receipt of notice, failing which the 2nd respondent is constrained to initiate appropriate legal action against the petitioner for recovery of amount. The 2nd respondent also demanded amount due under the promissory note. Para 3 of the notice consists of two parts. One is to pay Rs.25 lakhs covered by the dishonoured cheque within 15 days after receipt of the notice, with threat to initiate appropriate legal action. The other one is pertaining to demand for payment of amount due under the promissory note. Therefore, the first part is in strict adherence to Section 138 proviso (b) of the Act and the same question came up before the Apex

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[1] (2003) 8 SCC 300

Court in **K.R.Indira's** case referred supra. While deciding the validity of the notice, the Apex Court held that the notice in question is imperfect in the facts of the above judgment, not because it had any further or additional claims as well but it did not specifically contain any demand for the payment of the cheque amount, the non-compliance with such a demand only being the incriminating circumstance which exposes the drawer for being proceeded against under Section 138 of the Act.

Here in this case, the first three lines of the notice in para 3, the petitioner was called upon to pay the amount of Rs.25 lakhs within 15 days from the date of receipt of notice. The amount referred in para 2 i.e. the amount covered by cheque dated 27.04.2015 bearing cheque No.184396, for Rs.25 lakhs drawn on ICICI Bank, Visakhapatnam Main Branch, which was returned unpaid by the payee bank. Therefore, the demand made in para 3 though consists of two parts, the first part is sufficient incompliance of Section 138 proviso (b) of the Act. Therefore, applying the principle laid down in the above referred judgment, it is difficult to quash the proceedings against the petitioner since the second part of the demand is separable from the first part.

The other contention raised by learned counsel for the petitioner is that the complaint is bereft of details of cheque, its presentation, return and details of bank with which cheque was presented for collection and thereby the complaint is liable to be quashed. In para 3(a) there is a reference about date of borrowing of Rs.40 lakhs i.e. 14.02.2013 and execution of promissory note on the same date. Similarly in para 3(b), the date of cheque, cheque number, but the date of presentation of cheque was not mentioned. However, in the details given in the same para, the 2nd respondent disclosed all details including date of cheque, date of presentation as 28.04.2015, date of dishonour on 28.04.2015. The name of the collecting bank with which the cheque was deposited and returned was not mentioned. However, the cheque was drawn on ICICI Bank, Visakhapatnam Main Branch, therefore, the payee bank is only ICICI Bank as mentioned in Clause (b). But mere failure to disclose the name of the bank it was presented for collection is not a ground to quash the proceedings at this stage. Hence, the criminal petition is liable to be dismissed.

Accordingly, the criminal petition is dismissed at the stage of admission. However, it is left open to the petitioner to raise any grounds, which the petitioner is legally entitled before the Court below during trial.

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

M.SATYANARAYANA MURTHY,J

14.08.2018
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