

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.8401 of 2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.603 of 2018 on the file of Court of the II Metropolitan Magistrate – cum – Railway Magistrate at Visakhapatnam, registered for the offence punishable under Sections 138 and 142 of Negotiable Instruments Act (for short "N.I.Act.")

The respondent No.2 – complainant filed private complaint under Section 200 of Cr.P.C. for the offence punishable under Section 138 and 142 of the N.I.Act against the petitioner herein alleging that the petitioner borrowed an amount of Rs.4,00,000/- on 25.09.2016 from him for her family expenses and executed a promissory note on even date agreeing to repay the same with interest at the rate of 24% p.a. as and when demanded. Despite repeated demands made by the respondent No.2, the petitioner did not discharge the debt and issued a cheque bearing No.021137 dated 27.06.2017 drawn on State Bank of India, Venkateswarametta Branch, Visakhapatnam for Rs.3,70,000/- towards partial discharge of the debt due under the promissory note. The Complainant presented the said cheque for collection in Andhra Bank, Dabagardens Branch, Visakhapatnam, but the same was returned on 30.06.2017 as "no such account" along with memo to the complainant. Thereafter, a notice dated 10.07.2017 was issued to the petitioner herein to pay the amount covered by dishonored cheque within the stipulated time and the petitioner received the notice, but neither paid the amount nor issued any reply. Hence, respondent

No.2 – complainant filed the complaint for the offence punishable under Sections 138 and 142 of the N.I.Act.

The present petition is filed on the ground that the petitioner is not maintaining any account in any bank and when the cheque was dishonoured on the ground that “no such account”, it would not attract the offence punishable under the N.I.Act and placed reliance on the judgment of this Court rendered in Crl.P.No.4912 of 2018 and requested to quash the proceedings against the petitioner.

Notice was served on the respondent No.2 and filed proof of service, but none appeared on behalf of respondent No.2

Learned counsel for the petitioner reiterated the said ground during the arguments and contended that the allegations made in the complaint would not attract commission of offence punishable under Section 138 of the Act.

The respondent No.2 filed complaint under Section 138 of the N.I.Act, as the cheque was issued towards discharge of legally enforceable debt and on its presentation, the same was returned on the ground that ‘no such account’. Chapter XVII of the Act deals with penalties in case of dishonour of certain cheques for insufficiency of funds in the accounts. Section 138 of the Act made it clear that where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have

committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both.

The words used 'account maintained by him with the banker' assumes importance in this case since cheque bearing No.021137, dated 27.06.2017 allegedly issued by the petitioner drawn on State Bank of India, Venkateswarametta Branch, Visakhapatnam and on its presentation, it was dishonoured on the ground that there was no such account. But the petitioner is not maintaining any account in the said branch. Therefore, the cheque was not issued to be drawn on account being maintained by the petitioner with the bank and thereby constitute no offence punishable under Section 138 of the Act. Hence, the proceedings are liable to be quashed. However, this would not preclude the respondent No.2 to take appropriate action in accordance with law against the petitioner.

In the result, the criminal petition is allowed. The proceedings in C.C.No.603 of 2018 on the file of the II Metropolitan Magistrate – cum – Railway Magistrate at Visakhapatnam, are hereby quashed against the petitioner herein. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

26.09.2018
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