

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.8412 of 2018

ORDER

This petition under Section 482 of Cr.P.C., is filed to quash the proceedings in C.C.No.349 of 2016 pending on the file of Judicial First Class Magistrate/Junior Civil Judge, Palakonda (old C.C.No.379 of 2014), registered for the offence under Section 138 of Negotiable Instruments Act, against the petitioner/accused.

2. The second respondent filed a private complaint against the petitioner alleging that the petitioner borrowed hand loan from him and that to discharge of the same, petitioner issued a cheque bearing No.033229 for Rs.1,70,000/- on 25.06.2014 and another cheque No.033230 for Rs.1,00,000/- on 15.07.2014 drawn on Central Bank of India, Rajam Branch, in his favour. When the complainant presented those cheques in Andhra Bank, Palakonda Branch, they were returned for insufficient funds. Though the complainant got issued a notice on 11.08.2014, the petitioner neither gave any reply nor paid the amount covered by dishonored cheques. Hence, he filed the present complaint.

3. The petitioner filed the present petition on three grounds that the alleged cheques were not issued by him towards discharge of legally enforceable debt; he never borrowed any amount as hand loan from the second respondent; and except his signature on the cheques, the other part of the cheques is not in his handwriting as those cheques were issued in favour of the third parties and taking

advantage of the same, the present complaint is filed against him and therefore, he requested to quash the proceedings.

4. During hearing, learned counsel for petitioner Sri T. Tejeswara Rao, reiterated the grounds urged in the petition.

5. The second respondent filed a complaint for the offence under Section 138 of the Act alleging that the cheques were issued by petitioner towards discharge of legally enforceable debt i.e., hand loan, due to him and that those cheques were dishonoured on their presentation. The first contention of petitioner that he never borrowed any amount and never issued any cheque to the second respondent is purely a question of fact, which cannot be decided while exercising power under Section 482 of Cr.P.C.

6. The second contention of petitioner is that taking advantage of the blank signed cheques obtained by third party, a false complaint is filed against him and that when the petitioner accepted that the cheques were signed by him and handed over to third party, it is an inchoate instrument as defined under Section 20 of the Act. When a blank cheque was issued by a person, it is nothing but permitting the holder of the cheque to fill up the blanks and draw the amount in view of the judgment of the Division Bench of this Court in **Duggineni Seshagiri Rao Vs. Kothapalli Venkateswara Rao**¹, wherein it was held as under:

“Four things are necessary for an instrument to be a promissory note: 1) It should be in writing; 2) It should have an

¹ 2001(6) ALT 95 (D.B.)

unconditional undertaking; 3) It should be signed by the maker; and 4) it should be in favour of ceratin person or to a bearer.

Section 20 makes inchoate stamped instruments legal instruments. The dictionary meaning of 'inchoate' is 'incomplete'. So, incomplete stamped instruments are as good as the instruments mentioned in Section 4 of the Act. Even if one looks to the definition of the 'promissory note' under Section 4, one would find that the requirements for making an instrument a promissory note do not contain the requirement of naming a person, it can be given in favour of a certain person or to bearer of the instrument. That makes it clear that, one who is holding the document is the person who derives rights out of that instrument. In other words, it would mean that the document with first three requirements as stated above, should be delivered to the payee, once it is delivered it becomes a promissory note. Name and other particulars can be filled up even at a later stage. When one reads Section 4 in conjunction with Sections 20 and 42 that is the only interpretation that can be placed on the meaning of 'promissory note' under Section 4 of the Act. Section 20 lays down that when a person signs and delivers to another person a paper stamped in accordance with law relating to negotiable instrument it becomes a negotiable instrument even if it is wholly blank or written with incomplete particulars. Similarly, Section 42 even recognizes instrument issued in the name of fictitious person to be a valid instrument. Although Section 42 relates to bills but it also accepts that an acceptor of a bill of exchange even if it was in drawn in a fictitious name it would create a genuine claim in favour of the holder. Therefore, even if a negotiable instrument is incomplete it would be a legal instrument provided it satisfies the first three conditions.

Holder of the instrument becomes a bearer of the instrument."

This Court further held as follows;

"The plaintiff had been able to prove the execution of the document. On the other had, if the document was disputed or doubted the onus was on the defendant to show that the document was a forgery because a presumption is in favour of plaintiff under Section 118 of the Negotiable Instruments Act."

In another judgment in **Sukhminder Singh Vs. Nirbhai Singh**², the Punjab and Haryana High Court has laid down the same principle. Therefore, applying the principles laid down by the Division Bench of this Court and also the Punjab and Haryana High Court, the question of fact cannot be decided by this Court. When once the cheque was issued in terms of Section 139 of Negotiable Instruments Act, it would presume that the cheque was issued towards whole or part of legally enforceable debt and the presumption is rebuttable and such question cannot be decided by exercising power under Section 482 of Cr.P.C.

7. Thus, none of the grounds raised by petitioner are sufficient to invoke the jurisdiction of this Court under Section 482 of Cr.P.C., to quash the proceedings against the petitioner. Hence, the petition is devoid of merit and liable to be dismissed.

8. In the result, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending in this petition, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

9th August, 2018

sj

² AIR 2013 Punjab and Haryana page 77