THE HONORABLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.Nos.8596 and 8599 of 2018

COMMON ORDER

Since both these petitions are filed by the same petitioner/accused under Section 482 of Cr.P.C., to quash the proceedings in C.C.Nos.197 and 196 of 2018 on the file of V Additional Judicial First Class Magistrate, Nellore, respectively, registered for the offences under Sections 138 and 142 of Negotiable Instruments Act, 1881 (for short 'the Act'), they are being disposed of by this common order.

2. The second respondents in these petitions are filed two private complaints against the petitioner/accused alleging that the petitioner borrowed amount from them promising to repay the same within one month. Subsequently, after repeated demands, the accused issued cheques for Rs.2,50,000/- and Rs.3,00,000/- respectively, to them drawn on IDBI Bank, Ameerpet Branch, Hyderabad. When the complainants presented those cheques, they were returned with an endorsement 'funds insufficient'. Subsequently, they got issued legal notices on 04.12.2017 to the accused, who in turn, issued reply notices with false and frivolous allegations. Hence, they filed the complaints.

3. The contention of petitioner is that when he borrowed the amount of Rs.2,50,000/- and Rs.3,00,000/- from the complainants, there must be some evidence, but without any scrap of paper to prove that the complainants have possessed such huge amount on the specific date financing the amount as hand loan, the proceedings against the petitioner are liable to be quashed.

4. It is an undisputed fact that two C.C., are pending against the petitioner filed by the second respondents in both the petitions and they are different persons. But the cheques were issued by petitioner on the same day drawn on IDBI Bank, Ameerpet Branch, Hyderabad, and when they were presented on the same day at Andhra Bank, Podalakur Road Branch, Nellore, for collection, they were returned on the same day. Thereafter, notices were issued on the same day and reply was also issued on the same day. But, no piece of paper was produced along with the complaint to establish *prima facie* case that the second respondents have possessed means and lend amounts as hand loan to petitioner. It is contended by petitioner that in the absence of any such material, the proceedings against him cannot be continued.

5. When the cheques issued by petitioner were dishonoured on their presentation, the term under Section 139 of the Act comes into operation and the Court shall draw a presumption that those cheques were issued towards discharge of whole or part of legally enforceable debt or liability and the presumption is only rebuttable presumption. Therefore, when the presumption is in favour of the second respondents in both the cases, based on the contentions that no scrap of paper is produced before the Court, the proceedings against the petitioner cannot be quashed and that possessing means on the date of lending amounts is a disputed question of fact that can be decided only during trial and at this stage, by exercising power under Section 482 of Cr.P.C., the proceedings cannot be quashed in view of the law declared by the Apex Court in **Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Limited**[1].

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[1] (2016) 10 SCC 458

6. Therefore, I find no ground to quash the proceedings against the petitioner. However, it is left open to petitioner to raise all the grounds during trial and on raising the same, I am sure that the Magistrate will decide the issue in accordance with law.

7. In the result, the Criminal Petitions are dismissed. Miscellaneous petitions, if any, pending in these petitions, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

16th August, 2018

sj