

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.10849 OF 2018

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code'), is filed by the petitioners - accused Nos.1 and 2, to quash the proceedings against them in Calendar Case No.2111 of 2018, pending on the file of the learned I Additional Chief Metropolitan Magistrate at Vijayawada, Andhra Pradesh State, registered for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'Act, 1881'), on various grounds.

2. The petitioners herein are arraigned as accused Nos.1 and 2 in the aforesaid Calendar Case, and respondent No.1 is the complainant.

3. Respondent No.1 herein filed a private complaint against the petitioners, who are husband and wife, for the offence punishable under Section 138 of the Act, 1881, alleging that:

"i) Petitioner Nos.1 and 2 jointly borrowed an amount of Rs.3,00,000/- from respondent No.2 on 18.05.2015 for their family expenses; they jointly executed a promissory note in favour of respondent No.2 on the even date for the said amount agreeing to repay the same together with interest @ 24% per annum either to the complainant or to his order as and when demanded.

ii) On 08.06.2017 to discharge part of the debt under the promissory note, they issued a cheque bearing No.805076, drawn on State Bank of Hyderabad, Yellandu Branch, Khammam, for Rs.3,00,000/-. On presentation of the said cheque for collection on 26.08.2017 with his Banker – Andhra Bank, Sitarampuram Branch, Vijayawada, the said cheque was dishonoured

and returned unpaid on 14.09.2017 with a cheque return memo for the reason “Funds Insufficient”.

iii) On 13.10.2017, respondent No.2 called upon the petitioners to pay the amount covered by the cheque return unpaid by the Bank within the stipulated time by issuing a registered post legal notice. On receipt of the notice, which was acknowledged on 17.10.2017, the petitioners issued a reply on 26.10.2017 with false allegation of forgery etc. Since the petitioners failed to pay the amount covered by the returned cheque unpaid, respondent No.2 filed the complaint for the aforesaid offence.”

4. On receipt of the summons in the aforesaid Calendar Case, the petitioners filed the present Criminal Petition under Section 482 of the Code, to quash the proceedings against them, mainly on the ground that the account of the petitioners was transferred to Goleti Branch of Adilabad District on account of transfer of petitioner No.1 from Yellandu in the year 2012, and no joint account is being maintained by them with State Bank of India, Yellandu Branch, thereby issuing the cheque to discharge part of debt is inherently improbable to the circumstances. The cheque return memo does not bear the account number, and thereby the allegations made in the complaint are not sufficient to proceed further against the petitioners.

i) It is also contended that question of issue of cheque drawn on State Bank of India, Yellandu Branch on 08.06.2017 does not arise, as petitioner No.1 was transferred to Goleti in the year 2012 and, therefore, requested the Court to quash the proceedings against the petitioners.

5. At the stage of admission, learned counsel for the petitioners, Sri S. Surender Reddy, reiterated the contentions urged in the petition and requested to quash the proceedings against the petitioners.

6. As seen from the complaint, both the petitioners borrowed an amount of Rs.3,00,000/- on 18.05.2015, executed a promissory note jointly in favour of respondent No.2 agreeing to repay the same together with interest @ 24% per annum either to him or to his order as and when demanded. It is also averred in paragraph No.2 of the complaint that a cheque bearing No.805076, drawn on State Bank of India, Yellandu Branch, was issued on 08.06.2017 for Rs.3,00,000/- towards discharge of part of debt due under the promissory note. But, the contention of the learned counsel for the petitioners is that the account of petitioner No.1 was transferred long back i.e., in the year 2012 itself when he was transferred from Yellandu to Goleti of Adilabad District. If really the account was transferred, what made the petitioners to issue a cheque, dated 08.06.2017 is not explained. However, when the cheque was issued and presented for collection and returned unpaid with the cheque return memo. The contention of the petitioners is that the account was transferred long bank and, therefore, requested to quash the proceedings against them. But, transfer of account from Yellandu Branch to Goleti Branch cannot be decided at this stage, since cheque return memo issued by the Bank discloses the cause of return of cheque unpaid, as “insufficient funds” to the credit of joint account of the petitioners, who issued a joint cheque. Therefore, the petitioners are the

drawers or makers of the instrument as defined under Section 7 of the Act, 1881. Undoubtedly, there is no mention about account number in the cheque return memo, but for the fault of bank authorities, proceedings against the petitioners cannot be quashed.

7. When the cheque was allegedly issued and the same is accepted by respondent No.2, a presumption under Section 139 of the Act, 1881 shall be drawn that such cheque was issued towards discharge of whole or part of legally enforceable debt. However, in the present case, the issue of cheque itself is in dispute and when the account was transferred, question of issue of cheque at State Bank of India, Yellandu Branch is an absurdity.

8. It is also one of the contentions raised before this Court that the petitioners are not the joint account holders and that the cheque was not issued by them and it is a forged one. Such questions cannot be decided in a petition filed under Section 482 of the Code. Therefore, at this stage, the Court cannot exercise power under Section 482 of the Code to quash the proceedings against the petitioners in the aforesaid Calendar Case.

9. Accordingly, the present Criminal Petition is dismissed at the stage of admission itself. However, the learned Magistrate is directed to dispose of the aforesaid Calendar Case independently uninfluenced by the observations or findings, if any, recorded hereinabove.

As a sequel, Miscellaneous Petitions, if any, pending in the present Criminal Petition, stand closed.

M. SATYANARAYANA MURTHY, J

October 11, 2018

Mgr

