

Criminal Petition No.8703 of 2014

ORDER:

The petitioner is the accused in quash petition seeking to quash the proceedings in C.C.No.838 of 2013 pending on the file of the Judl.Magistrate of First Class, Nalgonda outcome of the private complaint of the 2nd respondent for the offence punishable u/ sec.138 of the Negotiable Instruments Act(for short, 'the Act'). It is for the alleged dishonour of the cheque bearing No.040184, dt.02.08.2013 for Rs.5lakhs drawn in favour of the complainant on Axis Bank Nalgonda branch and that when the cheque was presented it was returned as dishonoured for funds insufficient as per the endorsement, dt.12.02.2013 and after issuance of the legal notice dt.15.02.2013 received a reply with false allegations denying liability and from accrual of execution stated filed by the complainant that was taken cognizance from the sworn affidavit of the complainant by the learned Magistrate. It is no doubt mentioned in para-3A of the complaint that the accused approached the complainant for a loan of 5lakhs for personal and family necessity and out of faith, the complainant arranged said amount on 15.09.2011 and after receiving amount, the accused executed Demand Promissory note in favour of the complainant agreeing to repay on demand with interest at 2%per month.

2. One of the contentions in the present quash petition of the accused is that the so called cheque is misuse of the available blank cheque in relation to chit transaction as stated in the reply notice to the legal statutory notice issued by the complainant to the accused through his advocate and there is no legally enforceable debt or other liability within the meaning of the Explanation under Section 138 of the Act, and the promissory note allegedly executed is incomplete and undated and there is no any legally enforceable debt. The taking of cognizance on the complaint

in the facts by the learned Magistrate is unsustainable. It is also contended that the so called printed promissory note both the parts of 'Jameenu/guarantor' and 'receipt' left blank unfilled and unsigned.

3. Whereas the learned counsel for the respondent No.2-complainant submits that the cognizance order no way requires interference and if at all there is any such defence for the accused, it is left open during trial and sought for dismissal of the quash petition.

4. Heard both sides and perused the material on record.

5. It is not a case of the promissory note not signed if at all it is a blank pronote if at all as assurance for the so called chit amount installments from the reply notice averments as said defence of the accused is left open, for nothing to interfere with the cognizance order on once cheque was routed from the account of the accused. Where complainant able to show from evidence during trial of there is a debt and for which the pronote issued, the burden shifts on the accused to prove either by evidence coming to the witness box in defence or otherwise put forth his defence from cross-examination of complaint and other witnesses if any at least by preponderance of probabilities for ultimate appreciation by trial Magistrate even by consideration of what the single judge expression of this Court placed reliance by the learned counsel for the accused/quash petitioner in State of Karnataka Vs. Peerappa¹ in CrI.A.No.3558 of 2011 against the acquittal of the cheque bounce case is that mere issuing a cheque is not an offence u/ sec.138 of the Act but there must be money transaction between the accused and the complainant which should be concerned to discharge of legally enforceable debt or other liability as per Section 138 of the Act and in the case on hand, there is no piece of paper to

¹ 2017 (4) AICLR 173

show that the complainant advanced an amount to the accused and the accused indebted to the complainant for the alleged amount.

6. Having regard to the above, there is nothing to quash the cognizance order of the learned Magistrate.

7. Accordingly and in the result with the above observations and by left open all the available defences of the petitioner during trial to raise, the Criminal Petition is disposed of. Pending miscellaneous petitions, if any, shall stand closed.

Date:29.11.2018
vvr

Dr. JUSTICE B. SIVA SANKARA RAO

