

THE HONORABLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.24811 of 2017

ORDER

This petition under Section 482 of Cr.P.C., is filed to quash the proceedings in C.C.No.513 of 2017 pending on the file of II Additional Judicial First Class Magistrate, Kovvur, West Godavari District, registered for the offences under Sections 138 and 142 of Negotiable Instruments Act, 1881 (for short 'the Act'), against the petitioner/A2.

2. The second respondent, by name, Nimmagadda Satyanarayana, filed a private complaint against the petitioner and the third respondent/A1 alleging that he supplied black metal, gravel and sand from 24.01.2016 to 31.03.2016 worth Rs.12,00,000/- to the accused. On demand, the accused have paid an amount of Rs.2,40,000/- and failed to pay the remaining balance of Rs.9,60,000/-. Subsequently, on demand made by the second respondent, the accused issued a cheque bearing No.739051 for a sum of Rs.9,60,000/- on 02.05.2017 in the capacity of Sarpanch, Gram Panchayat, Sngarajupalem, and on presentation, the said cheque was returned unpaid along with a cheque return memo dated 04.05.2017 for the reason 'stop payment'. Thereupon, a notice was issued by the second respondent on 25.05.2017 calling upon the petitioner and A1 to pay the dishonoured cheque amount within the stipulated time. But they failed to pay the amount due. Hence, the complaint.

3. The present petition is filed by the petitioner/A2 on three grounds; the first ground is that the cheques were misplaced by the Junior Assistant of Gram Panchayat and the present cheque is one among those cheques; the second ground is that the petitioner has resigned as Sarpanch even

prior to presentation of the cheque and she has produced a copy of the proceedings issued by the Panchayat Raj Department, District Panchayat Officer, Eluru, dated 20.04.2017 to establish that she handed over the charge to the concerned Upa Sarpanch and therefore, she was not a drawer of the instrument as defined under Section 7 of the Act as on the date of alleged commission of the offence. The third ground raised by petitioner is that since the cheques were misplaced by the Junior Assistant, the Gram Panchayat addressed a letter to the Manager, State Bank of India, to stop payment of amount under various cheques including the present cheque dated 02.05.2017. The petitioner contended that the cheque was not issued towards legally enforceable debt and therefore, she cannot be proceeded for the offence under Section 138 of the Act and prayed to quash the proceedings against her.

4. During hearing, learned counsel for petitioner contended that the petitioner was no more as Sarpanch by the date of commission of offence i.e., presentation of cheque and its dishonour and that non-payment of amount gives rise to cause of action as her resignation was accepted and she handed over charge to Upa Sarpanch in terms of the proceedings issued by the District Panchayat Officer dated 20.04.2017 and in the circumstances, no criminal liability can be fastened to petitioner. The counsel relied upon the judgment of the Apex Court in **Harshendra Kumar D v. Rebatilata Koley Etc.**,¹ and on the strength of the principles laid down in the said judgment, he contended that when the petitioner was not the Sarpanch of the Gram Panchayat, no vicarious liability can be fastened to her to proceed for the offence under Section 138 of the Act in a Court of law and requested to quash the proceedings.

¹ 2011(1)ALD (Crl.) 848 (SC)

5. The counsel for the second respondent has disputed the very resignation and loss of cheques etc., and such question cannot be decided at this stage in a petition filed under Section 482 Cr.P.C., and that Section 141 of the Act has no application to the Gram Panchayat and it applies only to the Company of the firm as per explanation under Section 141(1) of the Act and the petitioner is not entitled to take advantage of the law laid down by the Apex Court in **Harshendra Kumar's** case, referred supra, and prayed for dismissal of the petition.

6. The petitioner was the Sarpanch of Gram Panchayat as alleged in the complaint. According to her, she resigned to her office as Sarpanch and the same was accepted and permitted to handover the charge to the Upa Sarpanch by proceedings dated 20.04.2017 issued by the District Gram Panchayat Officer, a copy of which is placed along with the petition. But, these proceedings are disputed by the second respondent. Therefore, when the proceedings are in dispute, this Court cannot accept the resignation, its acceptance and issuance of proceedings by the District Panchayat Officer, etc., to conclude that she was not the Sarpanch of the village on the date of commission of offence i.e., when the cheque was presented and unpaid by the payee Bank. Therefore, on the ground that she has resigned to her office as Sarpanch, the proceedings against her cannot be quashed. Though the counsel for petitioner has placed reliance on the judgment of the Apex Court in **Harshendra Kumar's** case, referred supra, Section 141 of the Act is applicable only to the company or firm or any association. But the petitioner is not a member of the Association or Director of the Company or a partner of the firm. Therefore, she being a Sarpanch of the Gram Panchayat cannot claim benefit under Section 141 of the Act, but criminal liability can be imposed against her being a

Sarpanch having allegedly issued a cheque, which was returned as unpaid with a cheque return memo and the principle laid down in the above judgment has no application to the present facts of the case.

7. The second contention raised by petitioner is that the cheques were misplaced by the Junior Assistant. In fact, the cheque in question was filled and signed by petitioner being Sarpanch of the Gram Panchayat. In normal course, when the petitioner was acting as Sarpanch of the Village, she is not expected to keep the signed cheques with the Junior Assistant or the Clerk and thereby the alleged misplacement is not supported by any material. When the cheque was signed and came into possession of the second respondent, the presumption under Section 139 of the Act would come into play. According to Section 139 of the Act, when the cheque was issued duly signed by the drawer, the Court shall presume that it was issued towards discharge of whole or part of legally enforceable debt or liability and it is a rebuttable presumption and such presumption can be rebutted only during trial and not under Section 482 of Cr.P.C. Therefore, when the cheque was handed over to the second respondent duly signed by petitioner, presumption under Section 139 of the Act shall be drawn and thereby, the question of alleged misplacement of cheques while dealing with MGNREGS funds is not supported by any material and no such complaint was lodged with the police against the Junior Assistant or Clerk of Gram Panchayat. However, it is a disputed question of fact that cannot be decided in a petition filed under Section 482 of Cr.P.C.

8. Though the petitioner submitted a letter to the Bank Manager to stop payment under three different cheques pertaining to MGNREGS funds, it would attract the offence, but still the cheques were came into possession of petitioner and whether the cheques were issued by

petitioner being Sarpanch of Gram Panchayat or not is a question to be decided during trial and therefore, on this ground, she cannot be exonerated from her liability for the offence under Section 138 of the Act based on the material placed on record. Hence, I find that it is not a fit case to exercise power under Section 482 of Cr.P.C., to quash the proceedings against the petitioner and the petition is liable to be dismissed.

9. In the result, the Criminal Petition is dismissed. However, it is left open to petitioner to raise all the contentions before the trial Court and I am sure that the trial Court will decide all these questions in accordance with law. Miscellaneous petitions, if any, pending in these petitions, shall stand dismissed.



M. SATYANARAYANA MURTHY, J

16th August, 2018

sj