

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No.3070 of 2019

ORDER:

1. The petitioner, who is accused in C.C.No.135 of 2018 on the file of the XII-Special Magistrate, L.B.Nagar at Hasthinapuram, Ranga Reddy District, filed this Criminal Petition under Section 482 Cr.P.C. to set aside Ex.P1, Ex.P4 and Ex.P5, which were marked on behalf of the 2nd respondent/complainant in the above C.C.

2. The brief facts of the case are that the 2nd respondent herein filed a private complaint against the petitioner/accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short "the Act"), alleging that the petitioner/accused, approached and requested him to advance a sum of Rs.2,00,000/- for the purpose of purchasing a Car. Considering the said request, the 2nd respondent has advanced the loan amount of Rs.2,00,000/- on 11.04.2016. After receiving the said amount, the petitioner/accused executed a demand promissory note in favour of the 2nd respondent agreeing to repay the same with interest and that he has paid the interest component from 11.04.2016 to 11.02.2017 and for payment of principal amount, the petitioner/accused issued a cheque bearing No.111157 dated 19.07.2018 for Rs.2,00,000/- drawn on IDBI Bank, Mansoorabad Branch. When the said cheque was presented in the account of the 2nd respondent in State Bank of India, Arunodaya Nagar Branch, Nagole, Hyderabad, for realization, the same was

dishonoured due to “funds insufficient”. After complying with all the requirements as contemplated under the Act, a private complaint came to be filed by the 2nd respondent herein. When the evidence of the 2nd respondent/complainant (P.W.1) was completed, the present Criminal Petition came to be filed to set aside certain exhibits, which were marked on behalf of the 2nd respondent.

3. Heard learned Counsel for the petitioner/accused, learned Additional Public Prosecutor for the 1st respondent and the learned Counsel appearing for the 2nd respondent/complainant.

4. It has been submitted on behalf of the petitioner/accused that at the time of marking documents, learned Counsel raised certain objections stating that Ex.P1-Promissory Note was attested by only one witness, Ex.P4-Legal Notice was not served on the petitioner/accused and Ex.P5-Returned Postal Cover was addressed to the invalid address of the accused, but the said objections were not considered by the trial Court. As such, he filed the present Criminal Petition to set aside the said exhibits.

5. Learned Counsel appearing for the 2nd respondent would submit that this is a case under Section 138 of Negotiable Instruments Act and the petitioner has received the notice and got issued a reply notice on 04.09.2018 admitting the execution of promissory note. He further submits that the present petition is filed only to drag on the proceedings.

6. The material placed before the Court would clearly indicate that at the time of chief examination of PW.1, Exs.P1 to P6 were marked. It is the contention of the petitioner that Ex.P1-promissory note, Ex.P4-office copy of legal notice and Ex.P5-retained postal cover are liable to be set aside, on the ground that Ex.P1-promissory note was not attested by two witnesses; Ex.P4-legal notice was not served on the petitioner/accused and Ex.P5-postal cover was sent to invalid address of the accused. Whether one witness is sufficient to prove the promissory note or not is the matter of evidence. That apart, it is a complaint case for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, but not the suit for recovery of money. In the present case, the Court has only to see whether there is a legally enforceable debt and whether the cheque has been issued to enforce the debt or not. Further, in the complaint, it is clearly mentioned by the 2nd respondent that after receiving the legal notice personally, the petitioner/accused has got issued a reply notice, dated 04.09.2018 through his counsel, admitting the acquaintance and execution of promissory note etc. Thus, I find no merit in the Criminal Petition and the same is liable to be dismissed.

7. Accordingly, the Criminal Petition is dismissed. Miscellaneous applications, if any, pending in this petition shall stand closed.

JUSTICE G. SRI DEVI

05.11.2019
gkv/Gsn

