

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

CRIMINAL PETITION No.10996 OF 2014

ORDER:

This petition, under Section 482 of the Code of Criminal Procedure (for short 'the *Cr.P.C*'), has been filed by the petitioners/ accused Nos. 1 & 2 with a prayer to quash the proceedings in C.C.No.46 of 2014 on the file of the VIII Metropolitan Magistrate, Rajendranagar, Rangareddy, for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881 (for short 'the *N.I. Act*').

2. The case of the respondent No.2/complainant is that the father of the complainant and the accused No.2 were friends and in such acquaintance in the year 2010, borrowed a hand loan of Rs. 3 lakhs with an undertaking to repay the same within a year. However, the re-payment was neglected and subsequently, the matter was placed before elders and on their intervention, the issue was settled for payment of Rs. 4 lakhs towards full and final settlement. In pursuance, thereof, the accused No. 1 had issued a cheque bearing No. 846412, dated 08.07.2013 for Rs. 3 lakhs as part payment, drawn on State Bank of Hyderabad, SSI branch,

Shamshabad without bearer's name, with an understanding that, the name of the complainant or his father's name can be entered while depositing the cheque for encashment.

3. The cheque was presented in State Bank of Hyderabad, Shamshabad branch, but the same was returned on 11.07.2013 for 'insufficient funds'. In spite of the statutory notice dated 18.07.2013 as the accused No.1 remained silent, the complaint came to be lodged.

4. Learned counsel for the petitioners would submit that even as per the complaint, there was no transaction between the accused No.1 and the father of the de-facto complainant and no material is placed to prove the transaction, which is foundation for the complaint. Further, no particulars are mentioned in the complaint as to the date of settlement and other alleged understandings. Above all the accused is only house wife and she has no source to repay such huge amount. In addition, even by the complainant's version, the cheque was issued without the bearer's name. In any case as the accused No.2 has not signed

the cheque, continuance of prosecution against him would be improper.

5. Further, by placing reliance on *Vijay v. Laxman and Ors*¹, *Basalingappa v. Mudibasappa*², *K. Ilayarajalingam v. K. Karthikeyan*³, *B. Indramma v. Eshwar*⁴, *Jugesh Sejgal v. Shamsheer Singh Gogi*⁵, *P.K. Choudhury v. Commander, 48 BRTF (GREF)*⁶, *K.S. Joseph v. Philips Carbon Black Ltd*⁷, *Sumit Deb v. Joy Deb and Ors*⁸, learned counsel for the petitioners submits that in absence of the details of date of loan and other evidence proving transaction presumption cannot be drawn in favour of the petitioners. In addition, pleaded that without there being a notice and opportunity of being heard, the delay of 14 days was condoned by the trial Court, though the proviso to Section 142-B is substantive and not procedural in

¹ MANU/SC/0125/2013

² MANU/SC/0502/2019

³ MANU/TN/4633/2022

⁴ MANU/KA/0309/2009

⁵ (2009) 14 SCC 683

⁶ (2008) 13 SCC 229

⁷ (2016) 11 SCC 105

⁸ MANU/TR/0227/2022

nature. On these grounds, prayed for quashment of the complaint and consequential proceedings.

6. Learned counsel for the respondent No.2/complainant pleaded that the respondent No. 1 had issued disputed cheque towards the liability of the accused No.2, as such, the accused are liable for prosecution. Further, disputed aspects by the petitioners has to be determined only after the trial. Further, issuance and return of the cheque by the banker unpaid will bring on prosecution under Section 138 of the NI Act. For this reason, drawing any conclusion in the present proceeding would cause serious prejudice to his case, hence prayed for dismissal of the petition.

7. Perused the materials on the record and the pleadings are given due consideration. The complaint averments are projecting that there was a transaction between the accused no. 2 and the father of the complainant and the cheque was issued by the accused No.1 against such liability. *Ex-facie* the petitioners/accused Nos. 1 and 2 are not disputing either the cheque or the

fact that was drawn on the account of the 1st petitioner/accused No.1.

8. It is well settled proposition that while exercising the jurisdiction under Section 482 of the Cr.P.C., the allegations made in the complaint shall only be taken at face value and if the uncontroverted allegations disclose any *prima-facie* case against the accused has to be examined. If this litmus test results in negative inherent power to quash the crime proceedings can be invoked.

9. In the present case, there is specific allegation as to issuance of cheque by the accused No. 1 and clear by the record. Though there is denial by the 1st and 2nd petitioners/accused Nos. 1 & 2, the stance of the complaint falls within the scope of holder in due course and the veracity of the complaint allegations and the defence assertions would be examined during trial and these facts cannot be determined in the quashment proceedings.

10. Further, Section 138 of NI Act, any person may issue the cheque in the discharge of whole or part of the debt or other liability. Therefore, the petitioners claim that the original transaction was between 2nd Petitioner/accused No. 2 and the

father of the complainant, for that reason the 1st petitioner/accused No. 1 cannot be held liable as it is alleged that the cheque was issued without any legal liability and in absence of essential aspects to draw presumption, continuing the complaint proceedings is improper, is found not acceptable. Be that as it may, as the cheque was issued by the accused No. 1 and as it is not the case that the cheque was also signed by the 2nd petitioner/accused No. 2. Prosecuting him for dishonor of cheque is unjustified.

11. For the aforesaid, the prosecution of the 1st petitioner/accused No. 1 under Section 138 of the NI Act is *prima-facie* suitable. However, continuance of complaint proceedings against the 2nd petitioner/accused No. 2, who has not issued the cheque would be abuse of process of law. In effect, the proceedings against the 2nd petitioner/accused No. 2 are liable to be quashed.

12. In the result, this petition is partly allowed. The petition of the 2nd petitioner/accused No. 2 for quashment of proceedings

against him in C.C.No.46 of 2014 on the file of the VIII Metropolitan Magistrate, Rajendranagar, is allowed.

13. The petition of the 1st petitioner/accused No. 1 for quashment of calendar case proceedings is dismissed.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

N. TUKARAMJI, J

Date: 20.12.2022

Plp

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

CRIMINAL PETITION No.10996 OF 2022
Date: 20.12.2022.

Plp