

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.5467 of 2014

ORDER:

In this petition filed under Sec.482 Cr.P.C, the petitioner/accused seeks to quash the proceedings in C.C.No.189 of 2013 on the file of III Additional Chief Metropolitan Magistrate, Vijayawada.

2) The second respondent/complainant filed C.C.No.189 of 2013 against the petitioner/accused under Section 138 of Negotiable Instruments Act, 1881 (for short "N.I.Act") with the allegations that both of them are childhood friends and on the request of accused, he lent Rs.61,15,956/- from time to time i.e. an amount of Rs.26,97,956/- in the form of Great Britain Pounds and rest of the money in Indian currency and later the accused executed a promissory note in favour of complainant for Rs.61,15,956/- and thereafter, on the demand of complainant, the accused in due discharge of legally enforceable debt, issued a cheque dated 11.12.2012 for Rs.61 lakhs in favour of complainant drawn on Axis Bank Limited, Dilshuknagar Branch and when the complainant presented the said cheque in Union Bank of India, Governorpet branch, Vijayawada through his power of attorney holder the same was bounced with an endorsement "*payment stopped by drawer*" on 12.12.2012 and thereafter the complainant got issued a legal notice on 05.01.2013 and the accused gave reply admitting the amount due to the complainant but denied the issuance of cheque.

Hence the complaint.

3) Now, the petitioner/accused filed the Criminal Petition to quash the proceedings in C.C.No.189 of 2013 challenging the CC allegations as false.

4) Learned counsel for petitioner argued that even if the compliant allegations are accepted to be true, the cheque was drawn on Axis Bank Limited, Dilshuknagar Branch, Hyderabad and hence, case is not maintainable at Vijayawada in view of the decision of the Apex Court reported in ***Dashrath Rupsingh Rathod vs. State of Maharashtra and another***^[1].

5) Heard both sides.

6) The point for determination in this petition is:

“Whether there are merits in this petition to allow?”

7) **POINT:** The petitioner/accused challenged the CC disputing the allegations in the complaint. It must be said that the accused can put forth his defence in the trial for consideration of the trial Court and the veracity of complaint allegations cannot be decided in this petition. Sofaras the maintainability of C.C.No189 of 2013 on the file of III Additional Chief Metropolitan Magistrate, Vijayawada is concerned, as rightly argued by learned counsel for petitioner/accused, in view of the ruling given by the Apex Court in ***Dashrath Rupsingh Rathod*** (1 supra), since cheque was said to be drawn and dishonoured at Hyderabad and as the evidence in C.C.No.189 of 2013 was not at commenced, the

criminal case is not maintainable on the file of III additional Chief Metropolitan Magistrate, Vijayawada and the same is liable to be transferred. Therefore, learned Magistrate is directed to return the case file to the complainant for presenting before the proper court.

Accordingly, this Criminal Petition is disposed of.

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

U. DURGA PRASAD RAO, J

Date: 15.04.2015

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[\[1\]](#) (2014) 9 Supreme Court cases 129