

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL PETITION No.12973 of 2015

ORDER :

This Criminal Petition is filed by the petitioner/accused under Section 482 of the Code of Criminal Procedure, 1973, seeking to quash the proceedings in C.C.No.138 of 2015 on the file of the I Additional Chief Metropolitan Magistrate, Visakhapatnam.

Briefly, the allegations in the complaint are that the petitioner borrowed a sum of Rs.5,20,000/- from the complainant, the 2nd respondent herein, for his family necessities and discharge of sundry debts. After persistent demands, the accused issued a cheque for Rs.5,20,000/- drawn on ICICI Bank, Visakhapatnam Branch at Dwarakanagar, in favour of the 2nd respondent towards partial discharge of the debt due. When the 2nd respondent presented the said cheque for collection in his Bank i.e., State Bank of India, Lalitha Nagar Branch, Visakhapatnam, the same was returned with an endorsement "funds insufficient". Thereafter, the 2nd respondent got issued a legal notice on 19.08.2013 calling upon the petitioner to repay the money covered by the aforesaid cheque. In spite of the same, the petitioner failed to repay the amount. Hence, a private complaint came to be filed against the petitioner for an offence punishable under 138 of the Negotiable Instruments Act, 1881. (for short, 'the Act').

Heard both sides.

A perusal of the material available on record shows that *prima facie* it cannot be said that there is no material to proceed against the petitioner. The contentions that are now raised are the matter of proof during the course of trial. Therefore, I see no merit in the criminal petition to quash the proceedings in C.C.No.138 of 2015.

At this stage, it is submitted by the learned counsel for the petitioner that the petitioner is aged 60 years and he is suffering from heart ailment and, therefore, his presence before the trial Court may be dispensed with.

In view of the above, the Criminal Petition is disposed of, directing the

learned I Additional Chief Metropolitan Magistrate, Visakhapatnam to proceed with the trial in C.C.No.138 of 2015 expeditiously, and the presence of the petitioner in the said case is dispensed with except on the dates when his presence is specifically required by the Court.

Consequently, miscellaneous petitions if any pending in the criminal petition shall stand dismissed.

M.S.K.JAISWAL,J

7th December, 2015

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