

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

CRIMINAL PETITION No.6935 of 2013

ORDER:

The present petition is moved by the 2nd accused in C.C.No.369 of 2012 on the file of the IV Special Magistrate, Kukatpally, earlier the said case was on the file of IX Metropolitan Magistrate, Cyberabad bearing C.C.No.2177 of 2010.

The 2nd respondent herein was the *defacto* complainant. He lodged the complaint on the premises that the respondents therein have committed an offence under Section 138 read with 142 Negotiable Instruments Act. The petitioner in this quash proceedings is arrayed as 2nd accused. The 3rd accused said to be another partner along with the present petitioner in the 1st accused-firm is still at large. Consequently, the defacto-complainant moved CrI.M.P.No.382 of 2013 under Rule 20 of Criminal Rules of Practice. The learned Magistrate has allowed that application by his order dated 13.06.2013. Consequently, for the present the prosecution is proceeded against the 1st accused and 2nd accused.

Heard Sri Adithya, learned counsel for the petitioner and

Sri R.Satyanarayana Swamy, learned counsel for the 2nd respondent.

Sri Adithya, learned counsel for the petitioner, would contend that the defacto-complainant has already attached the properties and the complaint does not clearly make out a case as to whether the 1st accused – firm and the 2nd accused, one of its partners are either jointly and severally liable to be proceeded against for the alleged offence under Section 138 Negotiable Instruments Act or not and in that view of the matter, the proceedings are liable to be quashed.

I am afraid, the contention canvassed by Sri Adithya, learned counsel for the petitioner, is a defence which the petitioner in the company of 1st accused - firm can offer before the learned Magistrate and it is for the Magistrate to apply his mind as to

whether the partnership firm, 1st accused and the present petitioner herein, 2nd accused are both liable to be proceeded against or not. Only in the event the learned Magistrate comes to a conclusion that they are both jointly and severally liable, then perhaps the follow-up action would be taken up but not otherwise.

Therefore, I do not see any justifiable reason for quashing the proceedings initiated by the 2nd respondent – defacto complainant. Hence, the petition stands dismissed preserving liberty to the petitioner herein to raise all such contentions which are available to him under law, which will be considered by the learned Magistrate. No costs.

The miscellaneous petitions, if any pending shall stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

10.06.2015

Note:

Issue C.C. by 15.06.2015

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