

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
CRIMINAL PETITION No.15176 of 2013

ORDER :

This Criminal Petition is filed by the petitioners/A1 and A2 under Section 482 Cr.P.C seeking to quash the proceedings in C.C.No.586 of 2013 on the file of IX Special Magistrate Court, Hyderabad, which is outcome of private complaint of the 2nd respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, for the alleged dishonour of the cheque bearing No.255803 dated 13.02.2013 for Rs.20,00,000/- drawn on State Bank of India, Narayanguda Branch, for presented dishonour and after statutory notice with false reply failed to pay saying from accrual of cause of action.

2. It is the contention of the petitioners in seeking to quash proceedings the so called lending of Rs.20,00,000/- is false and the very alleged obtaining of three cheques for which earlier issued notice each for Rs.2,00,000/- for alleged dishonour is unbelievable the complainant really lend Rs.20,00,000/- leave about the subsequent giving of so called cheque for Rs.20,00,000/-, which is the subject matter of private complaint even if at all to obtain only for Rs.6,00,000/- and odd and nothing beyond for Rs.20,00,000/- and thereby, the proceedings are liable to be quashed. The other contention is that A2 wife of A1 is not a drawer of the cheque and not shown how be made liable.

3. Whereas it is the contention of the learned counsel for the complainant in contra to the above that everything is a matter to be decided in trial when it is the case of the complainant that accused borrowed Rs.20,00,000/- at different times and for part discharge issued three cheques and for its dishonour when subsequently demanded issued the cheque which is subject matter for entire amount of Rs.20,00,000/-.

4. Leave about the so called lending and regarding lack of means

of complainant for Rs.20,00,000/- to lend, even not saying if at different times as to at what dates and what amounts and with what source and further for obtaining only three cheques each for Rs.2,00,000/- and not even for Rs.20,00,000/- initially and even the so called three cheques presented dishonoured, to believe the version of subsequently issued a single cheque for Rs.20,00,000/- which and factual aspects to make subject matter of trial before the learned Magistrate, so far as A1 is concerned, who is the drawer of cheque in question. So far as A2 is concerned undisputedly when not drawer of the cheque as held by the Apex Court in **M/s. Aparna v. Sheth Developers Pvt.Ltd.**^[1], the complaint proceedings against 2nd petitioner/A2 on its face unsustainable.

5. Accordingly and in the result, the Criminal Petition is partly allowed insofar as A2 while quashing the proceedings against her and insofar as A1, the criminal petition is dismissed by giving liberty to raise all available defences before trial Court.

6. It is needless to say, it is left open to the petitioner/A1 to file an application under Section 205 Cr.P.C. to represent through special vakalat holder and in such event the learned Magistrate shall consider and permit with necessary conditions of personal appearance, as and when required.

7. Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:14-12-2015
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^[1] 2013 CrI.J 3743