

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.282 & 283 of 2015

COMMON ORDER :

These two criminal petitions are filed by the self same petitioner under Section 482 Cr.P.C to quash the private complaint proceedings in C.C. No.618 of 2014 and 616 of 2014 filed by the 2nd respondent for the offence punishable under Section 138 of Negotiable Instruments Act, 1881.

2) The petitioner in both the cases is accused respectively in C.C. No.618 and 616 of 2014 on the file of II Additional Judicial Magistrate of the First Class, Nellore which are outcome of self same 2nd respondent's private complainant, Shriram City Union Finance Limited for the offences punishable under Sections 138 of Negotiable Instruments Act, 1881, that was taken cognizance by the learned Magistrate and the petitioner having been served with summons filed the applications to quash the proceedings. The contentions in the grounds of both the quash petitions self-same are that the cognizance taken by the learned Magistrate in both the complaint cases is contrary to law and also against the expression of the apex Court in ***Damodar S.Prabhu V. Sayed Babalal*** and also in one way coming for asking to come for peaceful settlement before Arbitrator and on the other hand initiating criminal prosecution based on the alleged cheques and dishonor, that the 2nd respondent/complainant exploiting the needs of the accused obtained as many as 48 signed blank cheques and also later two more signed blank cheques which are covered by the dishonor cheques in question and without even intimation and knowledge presented the cheques and filing of several complaints even for the one transaction instead of one complaint is also bad as per ***Damodar S.Prabhu*** supra and thereby the proceedings are to be quashed.

3) A perusal of the two complaints show C.C. No.618 of 2014 is for dishonor of the cheque bearing No.869464 drawn on ING Vysya Bank, Nellore for Rs.68,750/-, dated 15.09.2013 and coming to C.C. No.616 of 2014 it is in relation to cheque bearing No.869866 for Rs.68,750/- dated 15.11.2013.

4) The cheques presented dishonoured not in dispute and cheques bearing the signature of the accused also not in dispute and cheques routed from the account of the accused also not in dispute. Even for the statutory notice served and with no reply not in dispute. The cheques issued from the account of the accused of ING Vysya Bank within the jurisdiction of the learned Magistrate, where the private complaints filed also not in dispute and nothing could be shown as to trial Court has got no jurisdiction. Even by referring to the expression of the ***Dasarath Roop Singh Rathod V. State of Maharashtra*** leave about there is an ordinance for by amending the Negotiable Instruments Act provision in conferring the jurisdiction also to the Court where cheque presented returned dishonoured. Thus, the only contention remained is any bar to the two complaints for the two cheques from the expression placed reliance of ***Damodar S. Prabhu*** supra what para No.16 of the expression speaks if the cheques issued in one transaction filing of multiple complaints causes tremendous harassment and prejudice to drawers of cheque, thereby the Apex Court made it mandatory to complainant to file along with complaint sworn affidavit that no other complaint has been filed in other Court in respect of the same transaction. It was observed and directed the High Court pursuant to which to levy heavy costs on complainant in resorting to the practice of multiple complaints by giving the direction only prospectively. No doubt, the cheques in question are subsequent to that expression, though it is mandatory of even number of cheques given under a single transaction to file one complaint and to file affidavit to that effect rather than filing multiple complaints and the non-filing of affidavit or filing of several complaints for each of the separate cheques even outcome of same transaction, the remedy provided itself is there in the expression of imposing heavy costs on complainant and nothing more to say the complaint is bad.

5) Here, it is not even shown prima facie as to the two cheques in question of different debts, outcome of same or relate to same transaction and even it is shown as referred supra instead of one complaint, there is nothing to say different complaints not maintainable; but for where so filed and no affidavit filed of no other complaint filed, it's prone to costs for such dereliction of the mandate of the law as a remedy laid down therein in the expression. Having regard to the above, there are no grounds even on that ground to quash the two

complaint cases.

6) Accordingly, the quash petitions are dismissed without prejudice any of the defence before the trial Court. Pending miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

17.11.2015

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