HONOURABLE SRI JUSTICE GOPALAKRISHNA TAMADA

CRL.P.No.4898 of 2007

ORDER:

Petitioners are accused of offences punishable under Sections 138 to 142 of the Negotiable Instruments Act in C.C.No.328 of 2006, renumbered as C.C.No.412 of 2007 on the file of the Court of VII Additional Munsif Magistrate, Guntur and they seek quashing of the said proceedings.

According to the 2nd respondent-complainant, there were business transactions between the 2nd respondent-complainant and the 1st petitioner-company. Petitioners 2 to 5 are some of the Directors of the 1st petitioner-company. During the course of their business transactions, cheques were issued and one of the cheques bearing No.041794 dated 07.02.2006 for an amount of Rs.4,00,000/- drawn on Central Bank of India, Salem, was issued by the petitioners towards payment of the amount due to the 2nd respondent and when the said cheque was presented for realization, the same was bounced with an endorsement 'account closed'. Thereafter, after following the procedure provided for under Sections 138 and 142 of the Negotiable Instruments Act, the 2nd respondent-complainant filed the complaint and the same was taken on file by the trial Court. Aggrieved by the same, the petitioners-accused filed the present petition.

Heard both sides.

Learned Counsel for the petitioners submits that the petitioners 2 to 5 are only Directors of the 1st petitioner-company and they have nothing to do with the business transactions of the 1st petitioner-company. He further submits that the 1st petitioner-company became sick and an application was moved before the Board for Industrial and Financial Reconstruction under SICA to declare it as a sick company and the said application was allowed on 30.08.2005 and as such no criminal liability can be fastened on the petitioners' company and in the present case the provisions of Section 138 of Negotiable Instruments Act would not be attracted. He further submits that there is no legally enforceable debt payable by the petitioners herein and that the cheques were not voluntarily issued in discharge of the debt.

Learned Counsel for the 2nd respondent, while opposing the aforesaid submissions, brought to the notice of this Court an order passed in Criminal Petition No.2102 of 2007 dated 23.02.2010. It appears several cheques were issued by the petitioners herein towards payment of the amount due to the 2nd respondent and when the said cheques were presented for realization, the same were bounced back. , a complaint has been lodged by the 2nd respondent-complainant herein against the petitioners herein and aggrieved by the same the petitioners herein filed the Criminal Petition No.2102 of 2007.

From a reading of the order in Criminal Petition No.2102 of 2007, it is clear that this Court refused to entertain the said petition and dismissed the same on 23.02.2010. When once this Court had taken a view that the said complaint filed by the 2nd respondent herein is not an abuse of process of Court, this Court is of the view that a different view cannot be taken as the facts leading to filing of Crl.P.No.2102 of 2007 and that of the present petition are one and same. The petitioners are not able to point out any new facts other than the facts mentioned in the previous criminal petition. I find no merit in this criminal petition.

The Criminal Petition is accordingly dismissed.

(GOPALA KRISHNA TAMADA, J)

14.06.2010
Gsn.