

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO
CRIMINAL PETITION No.8660 of 2015

ORDER:

Heard learned counsel for the petitioners/A1 and 2 in C.C.No.29 of 2015 on the file of the II Additional Junior Civil Judge, Guntur, which is out come of a private complaint filed by the second respondent – *defacto* complainant for the offences punishable under Section 138 of Negotiable Instruments Act that was taken cognizance by the learned Magistrate, under Section 200 of Cr.P.C. also heard the first respondent-State represented by the learned Public Prosecutor before admission and before ordering notice to the second respondent-complainant and perused the material on record including the expressions placed reliance by the learned counsel for the petitioners viz. ***M/s. Indus Airways Private Limited and others Vs. M/s. Magnum Aviation Private Limited and another***^[1] and ***Lakshmi Prabhakar Vs. Satya Venkata Srinivasa Borusu and another***^[2].

The sum and substance of the contention of the learned counsel for the petitioners in seeking to quash the calendar case proceedings is that there was civil suit decreed against the petitioners herein in O.S.No.198 of 2011 and the decree holder who is the second respondent herein a propriety concern filed execution for its recovery (as per the money decree) and pending the execution (leave about the appeal filed, impugning the same before the High Court), there was a settlement outside the Court and an undertaking letter was executed on 01.04.2013 giving a cheque for Rs.25 lakhs as part payment as adjustment outside the Court out of the decree amount under execution of more than Rs.28 lakhs, that as per the undertaking letter the cheque given is post dated one not supported by any legally enforceable debt or other liability as held in ***M/s. Indus Airways*** case (supra) and

thereby the proceedings are liable to be quashed.

Infact in ***Indus Airways*** case (supra) there is no principle laid down that all post dated cheques are not supported by legally enforceable debt or other liability, but for on facts of the case for cheque given as advance payment in respect of a purchase order that was later waived and thereby held that there is no consideration to enforce the cheque. The facts are entirely different to the present facts. Even coming to other expression of ***Lakshmi Prabhaka's*** case (supra), the case is also confined to its own facts in quashing the proceedings.

Thus, it is premature to discuss further as these are the factual matrix that are required to be proved which is only possible before the trial Court.

Having regard to the above, there are no grounds to admit the application to quash the C.C. proceedings but for to say none of the observation will prejudice right of the accused in defence before the trial Court.

Accordingly, the Criminal Petition is dismissed.

Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:06.10.2015

vhb

[\[1\]](#) 2014 (6) SCJ 23

[\[2\]](#) 2013 (2) ALD (CrI.) 320 (AP)