

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.11160 OF 2015

ORDER:

1 This petition is filed under Section 482 Cr.P.C to quash the proceedings against the petitioner in C.C.No.297 of 2015 on the file of VI Additional Judicial Magistrate of I Class Court, Kakinada.

2 Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

3 A perusal of the record reveals that the petitioner herein issued a cheque bearing No.451708, dated 03.03.2014 for an amount of Rs.10,07,834/- drawn on Andhra Bank, Ramaraopet Branch, Kakinada in favour of the second respondent. The second respondent presented the cheque on 04.03.2014 in State Bank of India, Treasury Branch, Kakinada for collection. But the said cheque was returned on 05.03.2014 with an endorsement 'funds insufficient'. The second respondent got issued a notice to the petitioner on 06.03.2014 demanding to pay the amount covered under the said cheque within 15 days from the date of receipt of the notice. The second respondent has not received any reply from the petitioner. Thereafter, having no alternative, the second respondent filed the complaint on the file of VI Additional Judicial Magistrate of I Class Court, Kakinada under Sections 190 and 200 Cr.P.C. The learned Magistrate, after satisfying himself that the second respondent has followed the procedure as contemplated under Section 138 and 139 of the N.I. Act, has taken cognizance of the offence against the petitioner under Section 142 of the N.I. Act.

4 The predominant contention of the learned counsel for the petitioner is that no notice was served on the petitioner as contemplated under the provisions of the N.I. Act prior to the filing of the complaint.

5 A perusal of the record clearly reveals that the second respondent has sent the notice to the petitioner which was returned 'unserved'. Whether the second respondent has sent the notice to the address of the petitioner where he ordinarily resides or not is purely a disputed question of fact, which requires a detailed enquiry. If this Court expresses any opinion on this aspect, certainly, it may cause

prejudice to one of the parties to the proceedings. Whether the notice is served on the petitioner in accordance with law is purely a disputed question of fact, which can be decided by the trial Court only after a full fledged trial.

6 The second contention of the learned counsel for the petitioner is that the alleged debt is not legally enforceable. Whether the debt is legally enforceable or not is a mixed question of fact and law.

7 At the time of arguments, the learned counsel for the petitioner submitted that trial in the case has already begun. A perusal of the record clearly reveals that the trial Court has not committed any illegality or irregularity while taking cognizance of the offence against the petitioner under section 138 of the N.I. Act. The various grounds urged by the learned counsel for the petitioner require a detailed enquiry since they involve complexity of disputed questions of fact. While exercising inherent power under Section 482 Cr.P.C, this Court cannot decide the disputed questions of fact. Viewed from any angle, there are no grounds much less valid grounds to quash the proceedings against the petitioner. Hence the petition is liable to be dismissed.

8 In the result, the Criminal Petition is dismissed. However, dismissal of this petition does not preclude the petitioner to urge the grounds, which were raised in this Criminal Petition, before the trial Court. The trial Court is hereby directed to dispose of the matter uninfluenced by observations, if any, made by this Court in this Criminal Petition. As a sequel, the miscellaneous petitions, pending in this Criminal Petition, if any, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 6th November, 2015

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