

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

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Crl.P.No.2422 of 2015

ORDER:

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This Criminal Petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.223 of 2013 on the file of I Additional Chief Metropolitan Magistrate, Visakhapatnam.

The petitioner is alleged to have committed the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act.

According to the 2nd respondent-de facto complainant, a cheque for a sum of Rs.4,00,000/- issued on 04.03.2012 by the petitioner towards part payment of sale consideration of Rs.26,00,000/- in respect of sale of a house at Hyderabad to him was dishonoured on 02.06.2012. After issuing statutory notice a complaint has been filed.

Learned counsel for the petitioner submitted that as per the agreement of sale, the total sale consideration was much less; there is no basis for the calculations mentioned in the complaint of the 2nd respondent, which appear to be fictitious; and in view of this, the complaint lodged by the 2nd respondent is liable to be quashed.

As per the decision of the Supreme Court in **State of Haryana v. Bhajanlal**, the power under Section 482 Cr.P.C shall not be exercised where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety prima facie constitute any offence or make out a case against the accused.

This principle has been reiterated in several other cases of the Supreme Court.

A reading of the complaint lodged by the complainant, prima facie,

makes out the offence punishable under Section 138 of the Negotiable Instruments Act, the points raised by the petitioner are questions on fact, which need to be verified during trial by the Court below.

In this view of the matter, I am of the opinion that no case is made out for quashing the complaint in C.C.No.223 of 2013 on the file of I Additional Chief Metropolitan Magistrate, Visakhapatnam.

Therefore, the Criminal Petition is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08.04.2015

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