

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

Criminal Petition No. 10753 of 2009

Order:

This Criminal Petition is filed, under Section 482 Cr.P.C., by the petitioner/accused seeking to quash the proceedings in C.C. No. 16 of 2008 pending on the file of the Judicial Magistrate of First Class, Srikakulam, for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act and Section 420 IPC.

2. The allegations, in brief, are that the petitioner/accused - company is an HT consumer of the second respondent/complainant – EPDC of AP Limited, Srikakulam District and Circle, vide Service Connection No.132 of Akkurada village, Jalumur Mandal, Srikakulam District. The petitioner – company is said to have fallen due a sum of Rs.10,00,000/- to the second respondent/ complainant and for the said purpose the petitioner – company had issued four post dated cheques in the name of the Senior Accounts Officer, EPDC of AP Limited, Srikakulam, and when one of the said cheques was presented in Indian Overseas Bank, Srikakulam, for collection, the same was dishonoured with an endorsement “insufficient funds”. Hence, the petitioner – company is liable for the alleged offences.

3. The contention of the learned counsel for the petitioner – company is that since the second respondent/complainant authorities, in spite of receiving the post dated cheques for the amount due towards power consumption, failed to restore the power supply, the petitioner – company has filed a writ petition No.23223 of 2007 and this Court directed the petitioner – company to deposit Rs.10,00,000/- with the second respondent/complainant and in compliance of the said directions the petitioner – company has deposited Rs.10,00,000/- by way of demand drafts. He further contended that in spite of depositing the entire due amount, the second respondent/complainant, without returning the post-dated cheques, which were issued prior to deposit of

the amount by the petitioner – company, has presented one of the said cheques in the Bank for collection, and when the said cheque was dishonoured, the present complaint has been foisted against the petitioner - company.

4. It is not denied by the learned counsel for the second respondent/complainant that the post-dated cheques that were issued prior to deposit of the amount, were in respect of the amount due towards power consumption and in pursuant to the orders of this Court the entire due amount has been paid by the petitioner - company.

Therefore, the action of the second respondent/complainant in presenting one of the cheques, which were issued prior to deposit of the amount, in the Bank for collection and filing the present case against the petitioner – company on the basis of dishonour of cheque, is not proper. In that view of the matter, the proceedings in CC No.16 of 2008 pending on the file of the Judicial Magistrate of First Class, Srikakulam, against the petitioner – company, cannot be sustained and the same are liable to be quashed.

5. Accordingly, the Criminal Petition is allowed and all further proceedings in CC No.16 of 2008 pending on the file of the Judicial Magistrate of First Class, Srikakulam, against the petitioner – company, are hereby quashed.

6. As a sequel thereto, the miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

M.S.K. JAISWAL, J.

Date: 23.09.2015

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