

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.7622 of 2014

ORDER:

In this petition filed under Sec.482 Cr.P.C, the petitioner/A.3 seeks to quash the order dated 20.03.2014 in CrI.M.P.No.2401 of 2013 in S.T.C. No.77 of 2013 passed by V Additional Judicial Magistrate of First Class, Tirupati whereunder the learned Judge dismissed the petition filed by the petitioner/A.3 under Sec.239 Cr.P.C on the grounds: i) Firstly, that the case under Sec.138 of Negotiable Instruments Act (for short "N.I.Act") is a summons case and therefore, the accused cannot seek discharge under Sec.239 Cr.P.C and ii) secondly, that the contention of the petitioner that he was not the Managing Director or member of the society at the time of issuance of the cheque and so he was not liable under Sec.141 of N.I. Act was not tenable in view of the order passed by High Court of A.P in CrI.P.No.7907 of 2012 holding that the said aspect has to be decided after adducing necessary evidence before the trial Court and same cannot be resolved exercising power under Sec.482 Cr.P.C.

2) Heard.

3) The point for determination is:

"Whether there are merits in this petition to allow?"

4) **POINT:** As can be seen, S.T.C.No.416 of 2012 was filed by the complainant against A.1 to A.3 who are the President/ Authorised Signatory, Treasurer and C.M.D respectively of M/s.

Times with whom the complainant said to have did business and the accused refunded the deposited amounts of the complainant by way of two cheques which were bounced back and thereby the complainant filed the case under Sec.138 of N.I. Act against the accused. The contention of the petitioner/A.3 is that the present S.T.C is not maintainable against him as he resigned from the society on 01.09.2004 and besides, he was not the Signatory to the cheque issued and therefore, the proceedings against him were liable to be quashed. The impugned order reads that earlier A.3 filed a petition under Sec.482 Cr.P.C in CrI.P.No.7907 of 2012 before the High Court and the same was dismissed holding that "the petitioner is a member of the society or not is a question of fact to be decided after adducing necessary evidence before the trial Court. The question of fact cannot be resolved exercising powers under Sec.482 Cr.P.C". Thereafter, it appears, the petitioner/A.3 filed a discharge application under Sec.239 Cr.P.C before the trial Court and the trial Court dismissed the same on the two grounds mentioned supra. I find no irregularity or illegality in the impugned order, the factum of his resigning society is a question of fact to be decided only at the end of the trial particularly when the same is disputed by the other side. Therefore, as rightly held by the trial Court, the petitioner/A.3 shall establish his defence during the trial and as the matter stands, this petition cannot be allowed.

5) In the result, this Criminal Petition is dismissed.

As a sequel, Miscellaneous Petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 03.03.2015
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