

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.1257 of 2013

ORDER :

The Criminal Petition is filed by the petitioner under Section 482 Cr.P.C seeking to quash the proceedings in C.C. No.69 of 2011 on the file of IV Special Magistrate, Nampally registered for the offence punishable under Section 138 of the Negotiable Instruments Act.

2) On the private complaint filed by the 2nd respondent, the learned Magistrate taken cognizance from the statutory notice issued and cause of action accrued from non-payment and it is impugning the same the quash petition is filed. The contentions in the quash petition are that the so called borrowal of Rs.2,50,000/- in January, 2006 is not true, so also giving of the cheque No.196765 drawn on I.D.B.I and that there is no service of notice as contemplated and there is no cause of action to take cognizance apart from the cheque is fabricated one and the calendar case proceedings taken cognizance are liable to be quashed.

3) There is an interim stay of all further proceedings pursuant to the order dated 15.02.2013, giving by extension from time to time and there is a stay vacate petition filed by the 2nd respondent/complainant in CrI.P.M.P.No.9286 of 2015.

4) Heard both sides and perused the material on record.

5) It is not the case of the accused that the cheque slip is not from the account maintained by him. What he contends, the signature on the said cheque slip in making use as if given for Rs.2,50,000/- so called borrowal from is a fabricated signature. It is a disputed question of fact not open to raise in the proceedings under Section 482 Cr.P.C to agitate but for by facing trial before the trial Court, if

complainant could establish the signature that of the accused, to rebut by adducing any defence evidence if necessary. So far as the service of notice concerned, from the very complaint speaks that the notice sent is returned unserved with specific dates and from the date of return from cause of action accrued, the complaint filed and taken cognizance by the learned Magistrate and even it is not the ground in the quash petition, the address is not correct, from the presumption under Section 27 of the General Clauses Act and Section 114 of the Indian Evidence Act and also from the expression of three Judge bench of the Apex Court in **C.C.ALAVI HAJI Vs. PALAPETTY MUHAMMED-(Appeal(crl.) No.767 of 2007)**, once the notice is sent to the address and if at all there is a defence of the accused immediately after summons he has to pay within 15 days, failing which such a defence impugning service not left open.

6) Having regard to the above, but for to leave any such defence to impugn, the notice if at all not for correct address on that count also, prima facie there is nothing to interfere by this Court by sitting against the impugned cognizance order.

7) In the result, the criminal petition is dismissed. Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

24.11.2015

ksh