

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.5050 of 2015

ORDER :

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This Criminal Petition is filed by the Petitioner/Accused under Section 482 Cr.P.C seeking to quash the proceedings in C.C. No.264 of 2014 on the file of XV Special Magistrate, Erramanjil which was registered for the offence punishable under Section 138 of Negotiable Instruments Act.

2) Heard the learned counsel for the petitioners and the 1st respondent-State represented by the Public Prosecutor before admission and before ordering notice to the 2nd respondent and perused the material on record.

3) The learned counsel for the petitioner submits that there is no even service of statutory notice mandatorily required under Section 138 of the Negotiable Instruments Act for accrual of cause of action under Section 142 of the Negotiable Instruments Act and in the absence of cause of action C.C proceedings are nothing but abuse of process of Court. The learned counsel wants to submit pursuant to that, the notice was intentionally sent though the complainant is conscious of the petitioner is a State Bank employee working in Secunderabad for past several years, mentioned intentionally as if resident of Kadapa and the notice thereby returned not in village and not even chosen to give address where he is residing. In fact to substantiate the same, he wants to say that the address is given as Kadapa, whereas private complaint address of the accused is shown as Secunderabad. That itself shows the knowledge of the complainant and the mischief in his mind to say that notice not served. In fact, these are the factual aspects that are to be submitted with reference to the material before the trial Court as the trial is

already undisputedly in progress.

4) Having regard to the above, without prejudice to that right, the application is disposed of giving liberty to raise such defence to decide independently by the learned Magistrate. Needless to say as the petitioner is a bank employee, claims that there is every hurdle for his employment while attending every adjournment, for which the petitioner is at liberty to file an application under Section 205 Cr.P.C and in such an event, the learned Magistrate shall hear and grant permission to represent through special vakalat holder unless his attendance is necessary for any specific adjournment so direct.

5) With the above observations, the Criminal Petition is disposed of. As a sequel, miscellaneous petitions pending, if any, in this criminal petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

19.06.2015

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