

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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CRIMINAL PETITION Nos.2987 and 3027 of 2015

COMMON ORDER:

Both these Criminal Petitions have been filed by one and the same petitioner, who is arraigned as accused in two different calendar cases, they being C.C.Nos.496 and 524 of 2014 on the file of I Additional Judicial Magistrate of First Class, Amalapuram, seeking to quash the proceedings in the respective calendar cases.

Heard the learned counsel for the petitioner.

The petitioner, in these two petitions, approached the second respondent's office, and obtained SME loan for Rs.25.00 lakhs, and Rs.75.00 lakhs, under agreements dated 24.03.2012 and 31.07.2009 respectively. The petitioner - accused issued cheques for Rs.16,30,000/- dated 08.03.2013 drawn on ING Vysya Bank Limited, Rajahmundry, and Rs.20,53,125/- dated 28.02.2013 drawn on Axis Bank Limited, Rajahmundry, towards part-payment; that, when the said cheques were presented for collection on 10.0.2013, they were dishonoured on 11.03.2013 for the reason 'funds insufficient'; that a legal notice was issued by the second respondent on 18.03.2013; that notices were returned with endorsement intimation dated 26.03.2013; and that the statutory period had expired for payment. The second respondent filed the aforesaid calendar cases under Section 190(1)(a) Cr.P.C.

According to the learned counsel, when a memo was presented before the learned I Additional Judicial Magistrate of First Class, Amalapuram, by the petitioner stating that the said Court has no jurisdiction to entertain criminal complaint, in view of the judgment of the Hon'ble Apex Court in Dashrath Rupsingh Rathod v. State of Maharashtra, the said memos were rejected with

an endorsement “at this stage how his memo is maintainable as per the judgment of the Hon’ble Apex Court”. It is submitted that the learned Magistrate passed the said endorsement without looking into the judgment of the Hon’ble Supreme Court as the Hon’ble Supreme Court has observed that according to Section 138 of the Negotiable Instruments Act, 1881 return of cheque by the drawee bank alone constitutes the commission of the offence and indicates the place where the offence is committed. It is, therefore, his submission that the learned Magistrate has no authority to continue the proceedings in view of the judgment of the Supreme Court. On the aforesaid grounds canvassed by the learned counsel for the petitioner, the relief is sought to quash the proceedings in the respective calendar cases.

At the outset, it has to be mentioned that the memos which are originally placed in the material papers would indicate that the learned Magistrate has not rejected the memos but only raised an objection “the accused appeared before the Court in C.C.Nos.496 and 524 of 2014. At this stage, how this memo is maintainable as per judgment of the Hon’ble Supreme Court”. So, the allegation, in the grounds, that the memo was rejected is wholly incorrect. It would have been proper on the part of the petitioner herein to re-submit the memo to the competent Court by referring the decision and elaborating the principle laid down by the Hon’ble Apex Court and, certainly, could not have rushed to this Court and take it as a ground for quashing the proceedings in calendar cases respectively. Therefore, both the petitions are dismissed as no abuse of process of Court is to be found.

Incidentally, it is observed that the petitioner can once again present memos, in the respective cases, by answering the objection taken by the learned Magistrate. In case, the memos are represented again, it is for the learned Magistrate to hear both sides, and pass orders in accordance with law.

Accordingly, both the Criminal Petitions are disposed of. It is needless to observe that the learned Counsel for the petitioner is permitted to take back the memos filed in material papers as they contain the original endorsements of the

Court below by substituting with certified copies.

Accordingly, the Criminal Petitions are disposed of. Miscellaneous petitions pending, if any, shall stand disposed of.

A. SHANKAR NARAYANA, J

Date:21.04.2015

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