

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CRIMINAL PETITION No.3469 OF 2012

ORDER:

Vide the present petition, the petitioners/A.1 & A.2 seek a direction thereby to quash the proceedings in C.C. No.45 of 2012 on the file of IX Metropolitan Magistrate, Cyberabad at Kukatpalli.

The brief facts of the case are that the second respondent herein filed a private complaint before the Court mentioned above, alleging that the second respondent and second petitioner had started a business under the name and style of "Victory Bioscience (India) Private Limited" and later on, extended their business and set up another business by name "Victory Agencies" by inviting other individuals as partners. During the course of business, the second respondent withdrew himself from Victory Agencies and likewise the second petitioner withdrew from the Victory Bioscience (India) Private Limited. Subsequently, the second petitioner approached the second respondent and borrowed an amount of Rs.4,43,000/- towards hand loan and in discharge of the said loan, the second petitioner issued a cheque bearing No.563608, dated 03.02.2011 for Rs.4,30,000/- on behalf of the first petitioner company and when the said cheque was presented for encashment, the same was dis-honoured on 29.03.2011 with an endorsement "funds in-sufficient". After complying the statutory rituals, the second respondent filed the complaint for the offence under Section 138 of Negotiable Instrument Act (N.I.Act). Being aggrieved by the same, the petitioners herein filed the present petition.

Learned counsel appearing on behalf of the petitioners has drawn attention of this Court to page-8, where at the signatures on the said cheque was of the second petitioner and the second respondent. The complaint under Section 138 of N.I.Act has also been filed by the second respondent. Signature on the complaint and the signature on the cheque in question are one and the same.

Therefore, if the story of the second respondent is believed to the extent that the second petitioner had issued cheque in favour of the second respondent for enforceable debts, then how the signature of second respondent is attested on the cheque, in question.

It is a matter of trial whether the petitioners had to pay the amount to the second respondent, and how the cheque is signed by the second petitioner and the second respondent as well. It is not in dispute that they were in business previously, however due to inceptability or misunderstandings, they separated their businesses. The present cheque may be of the second respondent and used for the purpose of filing the case against the petitioners.

Though the learned counsel appearing on behalf of the second respondent fairly opposed and submits that the whole issue is subject matter of trial, however the learned counsel has failed to assist the Court on the issue how the cheque in question had been signed by the second respondent. If the second respondent had signed the cheque, then the second petitioner as well as the second respondent are equally liable to pay the amount. But the question comes otherwise? What to pay and to whom to

be paid. But for what purpose? There is no legally enforceable debts?

The case of the second respondent is that the second petitioner had to pay an amount of Rs.4,43,000/- against which he had issued cheque. But the cheque has been issued by the second petitioner and the second respondent as well. Thus, it is established that the second respondent has misused the old cheque without application of mind. Thus, in such a situation, the petitioners cannot be tried under Section 138 of N.I. Act.

In view of the facts recorded above and since the present petition was filed in year 2012, I hereby quash the proceedings in C.C.No.45 of 2012 on the file of IX Metropolitan Magistrate, Cyberabad at Kukatpally.

With the above findings, this criminal Petition is disposed of.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE SURESH KUMAR KAIT.

Date : 14-12-2016

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