

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No. 2266 of 2013

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ORDER:

This Criminal petition is filed under Section 482 Cr.P.C. by the petitioner/Accused No.1 praying the Court to quash the proceedings in C.C.No.7 of 2008 on the file of II Additional Judicial First Class magistrate, Machilipatnam.

Respondent No.2/complainant filed C.C.No.07 of 2008 before II Additional Judicial First Class Magistrate, Machilipatnam, against the petitioner/Accused No.1 and Accused No.2 under Section 138 of Negotiable Instrument Act alleging that the petitioner/accused No.1 borrowed amounts from him at different times and on his demand, the petitioner/A.1 issued a Cheque bearing No.701112, dt. 17.10.2007 for Rs.3,60,500/- towards full discharge of the amounts due under three promissory notes and when the complainant presented the same for encashment in the main branch of State Bank of India, Machilipatnam, it was bounced back with the endorsement "funds insufficient". After issuance of notice and following the due procedure, he filed the above said case against the accused.

Now, the petitioner/accused No.1 filed the instant Criminal Petition on the main ground that he issued a cheque for not discharging any legally enforceable debt, but towards collateral purpose and the complainant with an

ulterior motive presented the cheque in the bank and got bounced back and filed this case to harass him. On this plea, he sought for quashment of the proceedings.

The said contention is refuted by learned counsel for respondent No.2/complainant in his argument and stated that the said cheque was issued only for discharge of the debt under promissory notes contracted by the petitioner.

In the light of the above rival arguments, the point that arises for consideration is :

Whether there are any merits to allow this petition ?

Having regard to the nature of the contention of learned counsel for petitioner/Accused No.1, whether he issued a cheque for legally enforceable debt earlier contracted by him or only for collateral purpose can be decided only after full fledged trial before the lower Court. As such, I find no merits in the petition to quash the proceedings at this stage.

In the result, this Criminal Petition is dismissed with an observation that the petitioner/Accused No.1 is at liberty to take all necessary defense pleas that are available to him under law during the course of trial before the lower Court.

The II Additional Judicial Magistrate of First Class, Machilipatnam, is directed to dispose of C.C.No.07 of 2008 positively within a period of four months from the date of receipt of a copy of this Order.

As a sequel, miscellaneous petitions, if any, pending in

this case, shall stand closed.

U.DURGA PRASAD RAO,J

Dt: 23-02-2016

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THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRLP.NO.2266 OF 2013

Dt.23.02.2016

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