

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.2652 of 2013

ORDER:

The petitioners/A1 & A2 seek to quash the proceedings in CC No.83 of 2013 on the file of First Class Magistrate, Railway Court, Guntur, wherein the petitioners are facing charge for the offences under Section 138 of Negotiable Instruments Act, 1881 (for short "N.I Act").

2. In CC No. 83 of 2013, the case of the second respondent/complainant is that the accused and complainant engaged in software business activity and the accused concerned got the project work of preparation of ration cards in permanent DPL's project issued by the Government of Andhra Pradesh and on the request of A1, the complainant carried out the said activity of preparation of ration cards as per the desire of the accused and ultimately an invoice was raised for Rs. 1,28,31,605/- on 12.8.2009. In respect of the amounts due to him, the accused issued two cheques i.e., one cheque for Rs. 23 lakhs and another cheque for Rs. 20 lakhs. In respect of the cheque relating to Rs. 23 lakhs, the same was passed

on presentation of the complainant but the cheque bearing No. 001527, dated 12.3.2011 for Rs. 20,00,000 is concerned, the said cheque was bounced with an endorsement "payment stopped by drawer". The further allegations are that the complainant issued a notice dated 10.10.2011 calling upon the accused to pay the amount covered under the said cheque and the accused issued reply notice dated 21.10.2011 with all false averments and hence, the complaint under Section 138 of N.I Act.

3. Though notice served to second respondent and represented by Sri S.A.V. Sai Kumar, there is no representation when the matter is called today.

4. Heard.

5. Learned counsel appearing for petitioners taking this Court through the averments in reply notice dated 21.10.2011 tried to impress that as per his reply notice, after issuance of the second cheque bearing No. 001527 dated 12.3.2011 for Rs. 20 lakhs, certain events have transpired as narrated in the reply notice dated 21.10.2011 to the effect that the complaint approached them and obtained Rs. 10 lakhs from the accused i.e., Rs. 5 lakhs each by way of RTGS mode and the complainant also promised to return the hardware material supplied to him

but he failed to do so and the complainant with a view to get undue advantage and wrongful gain presented the cheque for Rs. 20 lakhs having fully well known that he promised to return the said cheque and also the hardware material and agreed to collect a cheque for the balance amount of Rs. 10,00,000/-. Learned counsel submitted in those circumstances, the accused had to issue an instruction to their banker to stop payment, which act will not attract any offence much less the offence under Section 138 of N.I Act and thus prayed to quash the proceedings in CC No. 83 of 2013 on the file of First Class Magistrate, Railway Court, Guntur.

6. The point for determination is whether there are any merits in this Criminal Petition to allow?

7. As can be seen from the submission made by the learned counsel in the context of the reply notice dated 21.10.2011, the facts referred by him as mentioned in his reply notice have to be appreciated after a full fledged trial in the trial Court but not in the instant quash petition. Therefore, liberty is given to the petitioners/accused to vindicate their stand by taking all the relevant defence pleas available to them under law before the trial Court.

On the request of the petitioners' counsel, the presence of the petitioners/accused is dispensed with before the trial Court except on the occasions when the trial Court specifically requires their presence.

8. With the above observation, the Criminal Petition is disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 11.04.2016
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