

THE HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.3986 of 2017

ORDER :

Heard the learned counsel for the petitioner/ accused in C.C.No.33 of 2016 on the file of the Spl.Magistrate Court, Visakhapatnam, outcome of a private complainant of 2nd respondent, taken cognizance for the offence u/ sec.138 and 142 of the Negotiable Instruments Act, and also the learned Public Prosecutor for the 1st respondent-State.

Perused the grounds urged in the quash petition and also the complainant's case and it is one of the main contentions of the learned counsel for the petitioner that there is no legally enforceable debt and taking of cognizance and continuation of proceedings are unsustainable.

As held in the expression of the Apex Court in Bhushan Kumar Vs. State (NCT of Delhi)¹, referring to Section 251 and 190 Cr.P.C., observed that the court got power even during examination under Section 251 Cr.P.C., if no case made out to acquit the accused even cognizance taken in a summons case or summary trial case as the case may be, the petitioner can raise all these contentions before the lower Court by filing an application u/ sec.251 Cr.P.C.

Accordingly and in the result, the Criminal Petition is disposed of. The petitioner is given liberty to raise all these contentions with regard to taking of cognizance etc., before the

¹ 2012 (5) SCC 424

trial Court. Pending miscellaneous petitions, if any, shall stand closed.

Date: 12.09.2017
vvr

Dr. B.SIVA SANKARA RAO J,

