

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.7829 of 2017

ORDER :

Heard the learned counsel for the petitioner/ accused in C.C.No.01 of 2017 on the file of the Spl.Mobile Magistrate-cum-Judl.Magistrate of First class, at Nagarkurnool town and District, Telangana State, outcome of a private complainant of 2<sup>nd</sup> respondent, taken cognizance for the offence u/ sec.138 of the Negotiable Instruments Act, and also the learned Public Prosecutor for the 1<sup>st</sup> respondent-State.

Perused the grounds urged in the quash petition, the complainant's case and the Memorandum of understanding said to have been executed between the parties by elderly settlement dt.03.03.2017 and it is one of the main contentions 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)<sup>1</sup>, 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.

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<sup>1</sup> 2012 (5) SCC 424

Accordingly and in the result, the Criminal Petition is disposed of. The petitioner is given liberty to raise all these contentions before the trial Court. Needless to say so far as the inconvenience expressed by the petitioner in attending the Court day-to-day concerned before the trial Court, it is left open by virtue of this order to file application u/ sec.205 Cr.P.C. for special vakalath holder and learned Magistrate to consider. Pending miscellaneous petitions, if any, shall stand closed.

Date:12.09.2017  
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Dr. B.SIVA SANKARA RAO J,

