SMT. JUSTICE T. RAJANI

CRLP.No.3726 OF 2013

ORDER:

This petition is filed by the petitioner seeking to quash the proceedings in C.C.No.272 of 2011 on the file of Special Magistrate Court, Narsampet, Warangal District.

2. Heard Counsel for the petitioner and the Public Prosecutor, who takes notice for respondent No.2 and none appears for respondent No.1 in spite of notices.

3. The contention of the petitioner's Counsel is that the amount under the cheque is taken from the complainant towards his share capital and under partnership agreement. The partnership agreement shows that Rs.2,80,000/- was received from the complainant as share capital. But the averments in the complaint are the touch stone on which this petition has to be decided.

4. The brief facts of the case are that on 20.7.2009 the petitioner borrowed a sum of Rs.2,80,000/- from the respondent for the purpose of business, with an undertaking that he will allot 5% of share and an agreement was executed on the same day and the same was agreed to be commenced from the same day. Thereafter, the complainant observed the business trend and changed behaviour of the petitioner, who did not pay a single pie upto April, 2010 and was avoiding to contact the complainant. Thereafter, the complainant approached the petitioner and requested him to

return the advance amount of Rs.2,80,000/- on which the petitioner issued a cheque. Counsel for the petitioner contends that this amount cannot be considered as legally enforceable debt and that the same is stated by the Supreme Court of India in a ruling reported in between **CHANDRAN RATNASWAMI Vs. K.C. PALANISWAMY AND OTHERS1**[1] . But the above judgement is not rendered in respect of Section 138 of Negotiable Instruments Act where under, a clear liability is fixed on a person who draws a cheque. Counsel for the petitioner also relied upon the judgement of this High Court reported in between **R. CHENNAKESAVA RAO Vs. P. LAXMI NARASAIAH AND ANOTHER2**[2]. But the said ruling does not have bearing on the facts of this case. The said ruling is on the aspect of money lending license. That cheque in this case which is filed along with the petition shows that it was issued by the petitioner in his individual capacity. It does not have the stamp of partnership firm. Hence, the contention of the petitioner's Counsel that unless there is deed of partnership, the complainant does not have a right to say that the amount is taken from the complainant towards business is not merited. When the petitioner takes upon himself to return the amount, that becomes a legal enforceable debt.

5. Hence, with these observations, it is opined that this is not a fit case for quashing of proceedings. Hence, the Criminal Petition is dismissed.

JUSTICE T. RAJANI

Dt.16-11-2017
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[1] 2013 (7) SCALE
[2] 2017 (4) ALT 488

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DATED:16-11-2017

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