

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.6815 OF 2017

ORDER:

Heard learned counsel for the petitioners/A-1 & A-2, who are no other than the proprietary concern and the proprietor.

2. It is to be noted that one person is arrayed as accused i.e., proprietary concern and the proprietor are not different persons, but one and the same person. The proprietor even styled in the name of a proprietary concern. It is left open to urge this aspect though nothing specifically urged in the grounds by the petitioners before the trial Court. So far as the other contention that the original payee discounted the cheque to the 2nd respondent Bank (the complainant of the private complaint case in C.C.No.269 of 2016, on the file of the II Additional Judicial Magistrate of First Class, Kadapa, Kadapa District, for the offence punishable under Sections 138 & 142 of the Negotiable Instruments Act, 1881 (for short, 'the Act')) is concerned, the payee was not arrayed as accused, but for the Bank as holder in due course the complainant, thereby not maintainable concern. There is no requirement from the wording of Sections 138 to 147 of the Act for impleadment of the original payee that too from the proviso clause B of Section 138 of the Act, it is very clear of a payee or holder in due course can maintain and also for the reason that Section 139 of the Act gives presumption even to the holder and as such there are no grounds for this Court to interdict the trial or to admit the petition, but for left open all available defences of the

petitioners/A-1 & A-2 to raise before the trial Court to consider on own merits.

3. Accordingly, this Criminal Petition is disposed of. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO, J

Date: 7th August, 2017

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