

HON' BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.6647 of 2017

ORDER:

Heard learned counsel for the petitioner/ accused of C.C.No.36 of 2017 on the file of the II Additional Judicial First Class Magistrate, Tirupathi, Chittoor District and also learned Public Prosecutor representing the State, before ordering notice to the 1st respondent-complainant, for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act').

The core contention of the petitioner from the very reading of the private complaint is that in the transactions between the petitioner/ accused and the late husband of the complainant for what is allegedly due under settlement, the petitioner/ accused issued the cheque in question. It is the contention that the said debt or other liability contemplated by Section 138 explanation and Section 139 of the Act not satisfied, for there is no legally enforceable debt or other liability for not a case of the accused borrowed any amount from the complainant and fallen due. In fact, it is a factual dispute to be adjudicated with reference to the material on record before the trial Court.

Having regard to the above, it is left open to the petitioner if already examined under Section 251 Cr.P.C. even to file an application under Section 251 Cr.P.C. for the learned Magistrate to decide the same on own merits, pursuant to the expressions of the Apex Court in Bhushan Kumar v. State (NCT of Delhi)¹ and Arvind Kumar Kejriwal and others v. Amit Sibal and another ². It is needless to say, it is left open to the petitioner to file an application under Section 205 Cr.P.C. to represent through special vakalat holder and the learned Magistrate to hear and pass orders by considering the same with necessary conditions.

Accordingly and in the result, the Criminal Petition is disposed of.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 02.08.2017
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¹ 2012(5) SCC 424

² 2014 SCC Online Del 212