

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.9845 of 2010

ORDER :

The petitioner, Managing Director of Variety Polyesters Limited, is the accused in S.T.C.No.66 of 2009 on the file of the Addl.Junior Civil Judge, Srikalahasthi, Chittoor district. It is outcome of the private complaint of the 1st respondent/complainant that was taken cognizance by the learned Magistrate for the offence u/sec.138 of the Negotiable Instruments Act(for short, 'the Act'), for the alleged dishonor of the cheque No.765422 ,dt.27.10.2008 for Rs.7,00,000/- drawn on SBI, Srikalahasthi, from the statutory notice without payment but for reply denying liability and from the accrual of cause of action, now sought to quash the proceedings in the STC supra.

Heard the learned counsel for the petitioner/accused and the 1st respondent/defacto complainant and also the learned Public Prosecutor representing the 2nd respondent-State and perused the grounds urged in the quash petition, the contents of the private complaint, the notice, the stop payment letter, the complaint to the police by the petitioner against one U.Shankar and reply to the statutory notice.

The contentions raised in the grounds of the quash petition are that even from the face value of the complaint, the accused borrowed 7lakhs on 26.06.2008 and executed pronote in favour of the complainant to repay with interest and paid Rs.55,232/- towards interest and issued cheque supra on 27.10.2008 drawn on SBI,

Srikakulam for the said principal amount of 7lakhs and the cheque presented was returned unpaid on 01.01.2009 even at the instructions presented twice the same was returned as insufficient funds and later with endorsement of stop payment by drawer. From the complaint the it is averred that one of the signed cheque is missing from the office and on noticing it a complaint was given to the bank on 14.10.2008 itself and also to the Station House Officer, Srialahasthi police station but police did not take action and in the meantime the company of accused came to know that the cheque was gone into the hands of one U.Shankar-the Accountant of the company, and the SBI Kalahasthi branch has debited an amount of 7lakhs from the account of the company to the credit of stolen cheque in spite of instructions not to honour the cheque and when the company protested the amount was retrieved to the account of the company and the company has filed a private complaint in the Court of VIII Addl.Chief Metropolitan Magistrate, Hyderabad, and said complaint is pending. The complaint further shows that the 1st respondent/defacto-complainant is stranger to the petitioner not even seen him and the complaint is not maintainable and the averments in the complaint of the cheque issued from the amounts borrowed with a request to repay but even returned dishonored is untrue and the company on whose behalf the cheque issued when not made a party to the proceedings against the petitioner as Managing Director no way survive in his personal capacity for not

a personal borrowing and thereby the proceedings are liable to be quashed.

A perusal of the complaint shows the petitioner/accused that borrowed the amount for his business purpose and executed pronote with a promise to repay with interest and paid interest and issued the cheque for the principal amount and when same presented returned dishonored and even at his request when represented returned as there were instructions of stop payment though earlier returned for 'insufficient funds' and as the cheque issued for legally enforceable debt and returned dishonoured and failed to pay even from the statutory notice, the accused is liable.

There is nothing to show that the cheque was issued by the company or any entity in the absence of filing of the cheque and same is material for that. When complaint averments prima facie show it is a personal borrowing by the petitioner/accused, a question of impleading entity much less with name of Variety Polyesters Limited to the complaint or for non-impleadment and non-array, the non-maintainable does not arise and it is not a case of he is not the drawer of the cheque and it no way bears his signature. Once such is the case, it is left open to raise defence about the so called missing of the cheque with his signature and therefrom the presumptions cannot be applied of even the cheque routed from the account with signature, to establish the said version of that it is stolen one and there is no

borrowal and there is no liability, it is premature to decide much less to quash the proceedings.

Having regard to the above, the Criminal Petition is disposed of for nothing to interfere with the proceedings of rightly by vacating stay and it is left open available defences to the petitioner during trial before trial Court. Consequently, pending miscellaneous petitions, if any, shall stand closed.

Date:13.09.2017
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Dr. B. SIVA SANKARA RAO J,

