

THE HON'BLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.1107 OF 2017

ORDER:

The writ petition is filed seeking a writ of Certiorari by calling for the records pertaining to complaint in C.C.No.153 of 2016 pending on the file of the Additional Judicial Magistrate of First Class, at Jagityal, Karimnagar District, for the offence under Section 138 of the Negotiable Instruments Act and quash the same by declaring the same as illegal and arbitrary.

Heard and perused the material.

Learned counsel for the petitioner submits that it is alleged in the complaint that the petitioner issued cheque to the second respondent for discharging legally enforceable debt and that the said cheque is dishonoured due to 'funds insufficient'. He further submits that there is no existing debt as on the date of issue of cheque, as there is no document filed by the second respondent regarding cancellation of the agreement of sale and that taking advantage of the blank cheque, the second respondent presented the said cheque. Hence, the learned counsel prays this Court to quash the complaint in C.C.No.153 of 2016 pending on the file of the Additional Judicial Magistrate of First Class, at Jagityal, Karimnagar District, for the offence under Section 138 of the Negotiable Instruments Act.

This Court is of the view that the writ petition is not maintainable under Article 226 of the Constitution of India as the dispute is between two individuals and that the State is not a party. Hence, the writ petition is dismissed giving liberty to the petitioner to seek appropriate remedy under Section 482 of Code of Criminal Procedure.

The writ petition is accordingly dismissed. Consequently, miscellaneous petitions, if any shall also stand disposed of.

JUSTICE RAJA ELANGO

06.01.2017
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