

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Criminal Petition Nos.3234 and 3237 of 2017

COMMON ORDER:

The self same petitioner maintained the two quash petitions being the accused in C.C. Nos.88 and 69 of 2016 respectively pending on the file of II Additional Judicial First Class Magistrate at Addanki, Prakasam District, since ordered amendment petition, which are outcome of two private complaints of 2nd respondent respectively for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act'), impugning the cognizance taken by the learned Magistrate under Section 142 of the Act from the so-called accrual of cause of action stated by the complainant.

2. The main impugnement is among other grounds of no liability much less legally enforceable, that there is no accrual of cause of action for the cheque not even reached to the account of the accused drawer bank much less on the ground of insufficient funds or otherwise from which only giving of statutory notice and statutory waiting for non-payment, if any, from accrual of cause of action maintaining the complaint under Section 142 of the Act for the alleged offence under Section 138 of the Act arises.

3. Heard both sides and perused the material on record.

4. This Court cannot ignore the provision covered by Section 146 of the Act covered by amended Act 55/2002 w.e.f. 06.02.2003 which speaks that the Court shall presume from the bankers slip, prima facie evidence of the dishonour of the cheque unless and until such fact is disproved.

5. Once such is the presumption, similar to the other presumptions available under Sections 118 and 139 of the Act from the reverse onus clause burden is on the accused to rebut, this Court cannot quash the proceedings but for such a defence is left open to the petitioner to raise before the trial Court, for the trial Court to consider this aspect also in deciding the case and otherwise by filing an application before the Court by virtue of the expression of the Apex Court in **Bhushan Kumar Vs. State (NCT of Delhi)**¹ .

5. Accordingly, the Criminal Petitions are disposed of by giving liberty to the petitioner to raise all the contentions before the trial Court. Pending miscellaneous petitions, if any, shall stand closed.

Date: 09.10.2017
knl

JUSTICE Dr. B.SIVA SANKARA RAO

¹ 2012 (5) SCC 424