

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

CRIMINAL PETITION No.9701 OF 2017

ORDER:

The petitioner is the accused in C.C.No.806 of 2015, pending on the file of XXV Metropolitan Magistrate at Kukatpally, which is outcome of the private complaint of the 2nd respondent entity, for the offence punishable under Section 138 N.I.Act for the dishonour of the cheque bearing No.000004, dated 01.04.2015, for Rs.5,00,261/-.

2. Heard learned counsel for the petitioner and learned public prosecutor, representing the 1st respondent – State, before ordering notice to the 2nd respondent – defacto complainant and perused the grounds urged in the quash petition and also the private complaint and exchange of notices and the defense set out therein.

3. The contention of the petitioner in the quash petition of the said cognizance order of the private complaint for the said offence taken against her by the learned Magistrate is that there is no legally enforceable debt or other liability, within the meaning of Section 138 r/w 139 of the N.I.Act.

4. It is in fact a matter of fact requires trial and premature to give any finding as to there is a legally enforceable debt or not, much less, to quash the proceedings or to keep the petition pending, by ordering notice to 2nd respondent. Leave

about such a petition even under Section 251 Cr.P.C. can be filed before learned Magistrate as per the expression of the Hon'ble Apex Court in ***Bhushan Kumar Vs. State (NCT of Delhi)***¹.

5. Accordingly and with the above observation, this criminal petition is disposed of, for nothing to keep the matter pending, much less by admitting, by left open all defenses to the petitioner to urge before the trial court. Needless to say, from the personal inconvenience expressed to attend the court regularly as residing at Bangalore, liberty is given, by virtue of this order, to file application under Section 205 Cr.P.C. before the learned Magistrate to hear and decide on merits with necessary conditions of such permitting for personal appearance as and when required.

6. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO, J

24.10.2017
SS

¹ 2012 (5) SCC 424