

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

CRIMINAL PETITION No.1577 OF 2017

ORDER:

Heard learned counsel for the petitioner/accused of C.C.No.161 of 2016, pending on the file of Additional Judicial First Class Magistrate, Tuni, for the offence punishable under section 138 N.I.Act, outcome of the report of the 2nd respondent – complainant for dishonour of the cheque dated 15.11.2015, which was issued for the pro-note debt covered by even date and from the cheque returned on 21.11.2015 dishonoured and from the bank intimation and from the statutory notice and approval of cause of action, the complaint is filed.

2. The only contention raised is that there is no legally enforceable debt or other liability as the cheque in question is issued as a security for the pro-note debt. Undisputedly, the cheque and pro-note are on the one date, that does not mean as a security but for to the pro-note debt. Once it is given to the pro-note debt, in the absence of showing liquidation of the pro-note debt, it is a debt or other liability apart from legally enforceable within the explanation to Section 138 N.I. Act and also from the fact that cheque routed from his account with his signature, since not in dispute, the presumption as applicable under section 118 of the N.I. Act also that apply as laid down by the three Judge bench judgment of Hon'ble Apex

Court in ***Rangappa Vs. Sri Mohan***¹, under the reverse onus clause shifting the burden on the accused, nothing more is required. Hence there is nothing to say the quash petition is sustainable, but for left open all the defenses and the above observation no way influence the mind of the trial court in deciding the case on own merits. As it is the submission that NBW is pending from the non-honour of summons, according to him not served is given liberty by virtue of this order to surrender before the learned Magistrate and the learned Magistrate shall obtain bond with or without sureties as contemplated by Section 88 of Cr.P.C. for his future due appearance to proceed with the case on merits.

3. Accordingly and with the above direction, this criminal petition is disposed of. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO, J

21.09.2017
SS

¹ (2010) 11 SCC 441