

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

CRIMINAL PETITION No.7351 OF 2017

ORDER:

Heard learned counsel for the petitioner/A1, among two accused, in C.C.No.103 of 2016, which is outcome of the private complaint of the 2nd respondent – defacto complainant, for the offence punishable under Section 138 N.I.Act, taken cognizance by the learned Chief Metropolitan Magistrate, Visakhapatnam, where it is pending.

2. It is the contention of the counsel for the petitioner/A1 that A1 entity is not at all the drawer of the cheque in question and that the cheque belongs to A2 in his individual capacity. It is a matter thereby requires some fact finding if necessary by calling the particulars from the Bank as to in whose name the account was opened either in the name of the A2 – Raghuram individually or in the name of A1 and if at all there is any allegation specifically in the complaint as to in what capacity A2 issued the cheque.

3. Having regard to the above, this criminal petition is disposed of, giving liberty to the petitioner herein to file a petition before the trial court under Section 251 Cr.P.C. for the trial court to decide the same pursuant to the expression of the Hon'ble Apex Court in ***Bhushan Kumar Vs. State***

(NCT of Delhi)¹, apart from the other expression of the Hon'ble Apex Court in ***Aparna A.Shah Vs. Sheth Developers Private Ltd. And another²***.

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

DR.B.SIVA SANKARA RAO, J

31.08.2017
SS



¹ 2012 (5) SCC 424

² 2013 (8) SCC 71 = 2013 (3) ALT(Crl) 1 SC