

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

CRIMINAL PETITION No.9649 OF 2017

ORDER:

Heard learned counsel for the petitioner and learned public prosecutor, representing the 1st respondent – State, before ordering notice to 2nd respondent – defacto complainant.

2. The main context is that there is no statutory legal notice, much less, within the time prescribed and there is no approval of cause of action to take cognizance and the cognizance order of the private complaint case for the under Section 138 N.I.Act on the private complaint of the 2nd respondent against petitioner is liable to be quashed.

3. A perusal of the complaint particularly from Paras 6 and 7 disclose that the cheques dated 05.09.2014, when presented, were returned dishonoured on 08.09.2014 and statutory legal notice is given therefrom and though the notices cause returned, it is a sufficient service as unclaimed. Once such is the case, in the absence of showing that the statutory notice after dishonour not given within the prescribed period, there is nothing to admit the quash petition or to quash the proceedings, but for following the expressions of the Hon'ble Apex Court in **Bhushan Kumar**

Vs. State (NCT of Delhi)¹ and ***Arvind Kejriwal & Others Vs. Amit Sibal and another***², such a remedy to file application under Section 251 Cr.P.C. to urge this aspect before the trial court, where the material documents are available, left open.

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

23.10.2017
SS

DR.B.SIVA SANKARA RAO, J



¹ 2012 (5) SCC 424

² 2014 SCC online Del 212