

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1964 OF 2017

ORDER:

The present Criminal Petition is filed under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code') requesting to quash the proceedings in C.C. No.765 of 2016 on the file of V-Additional Judicial Magistrate of First Class, Nellore.

2. The petitioner is the sole accused in the aforesaid Calendar Case, in a complaint where the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'N.I. Act') is clutched by the 1st respondent/complainant.

3. Heard Sri Ch. C. Krishna Reddy, learned counsel for the petitioner, and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

4. This Court by order dated 10.3.2017, permitted personal notice on the 1st respondent/complainant, and the same was served on the 1st respondent, in regard to which the learned counsel for the petitioner filed proof of service vide Memo in USR No.1793/2017.

5. The learned counsel for the petitioner would submit that the endorsement issued by IDBI Bank Limited, Nellore on 8.9.2015, shows "payment stopped by the drawer", by which reason the cheque for Rs.10 lakhs issued by the petitioner was dishonoured, and, therefore, it does not satisfy the requirement of Section 138 of N.I.

Act. His next submission is that the complainant, having received the Memo from the Bank on 10.9.2015, got issued Notice dated 11.9.2015 and posted on 14.9.2015, but it was not served. But, the complainant has taken the plea that the petitioner avoided to receive the said notice and, therefore, even mandatory request envisaged by the provisions of Section 138 of the N.I. Act is not satisfied, and, therefore, prosecution of C.C. No.765 of 2016 is nothing but abuse of the process of law.

6. The aforesaid defence agitated by the petitioner requires appreciation of evidence as the events referred to by the learned counsel for the petitioner relate to factual aspects, in regard to which a probe is required to be done, which can only be done by conducting trial and the petitioner herein would get an opportunity of being heard to confront the complainant on these aspects of the case. Therefore, it is not a case where exercise of power under Section 482 is warranted by viewing the prosecution of the petitioner in the aforesaid calendar case would amount to abuse of the process of law, as sought to be viewed by the learned Counsel for the petitioner.

7. Hence, the Criminal Petition is dismissed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 04.04.2017

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