

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Criminal Petition Nos.5269 and 5336 of 2017

COMMON ORDER:

Heard the learned counsel for the self same petitioners in both the Criminal Petitions who are accused persons 1 to 3 in C.C.No.50 and 51 of 2017 respectively pending on the file of the XII Special Magistrate, Erramanzil, Hyderabad, which are outcome of the private complaints filed by the self-same 2nd respondent/defacto-complainant for the offence u/sec.138 of the Negotiable Instruments Act (for short, 'the Act') taken cognizance for dishonour of respective cheques bearing Nos.000287 dt.12.09.2016, 000288 dt.20.09.2016 and 000289 dt.28.09.2016 (in C.C.No.51 of 2017) for Rs.40lakhs each and Nos.000284 dt.22.08.2016, 000285 dt.29.08.2016 and 000286 dt.05.09.2016 (in C.C.No.50 of 2017) for Rs.30lakhs each, and also heard the learned Public Prosecutor representing the 1st respondent but no representation for 2nd respondent/defacto complainant and perused the grounds in the petition.

The contentions raised by the learned counsel for the petitioners that there is no presentation of the cheques and its return much less dishonour therefrom which is pre-requisite even to issue any statutory notice and alleged non-payment for accrual of cause of action after statutory waiting and thereby there is no offence.

In fact, it is a matter to be decided from the perusal of the record before the trial Court for factual adjudication with reference to law.

Having regard to the above and from the expression of the Apex Court in **Bhushan Kumar Vs. State (NCT of Delhi)**¹ and **Arvind Kejriwal & Ors vs Amit Sibal**², these contentions are available u/sec.251 CrPC, for the petitioners/A.1 to A.3 to urge before the trial Court to decide on merits and also by virtue of this order.

Accordingly and in the result, both the Criminal Petitions are disposed of. Pending miscellaneous petitions, if any, shall stand closed.

Date:04.09.2017
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JUSTICE Dr. B.SIVA SANKARA RAO



¹ 2012 5 SCC 424

² 2014 SCC online Delhi 212