

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

**CRIMINAL PETITION No.9603 OF 2017**

**ORDER:**

Heard learned counsel for petitioner/accused of C.C.No.95 of 2013, pending on the file of Additional Junior Civil Judge, Giddalur, Prakasam District. The above case is filed by the 2<sup>nd</sup> respondent, based on a private complaint for the offence punishable under Section 138 NI Act and Section 420 IPC.

2. Several contentions are raised regarding the signature on the cheque not that of the accused as per ground (b) and there is no valid service of notice as per grounds (a) and (c) and therefrom, there is no approval of cause of action and that there is no source of income being the defacto complainant, a white card holder and burden is on him to establish that he got means to lend the amount as per grounds (d) and (e).

3. In fact, so far that contention of means concerned, placed reliance on ***R.Chennakesava Rao Vs. P.Laxmi Narsaiah***<sup>1</sup>, even from the judgment, it was the observation confining to the facts and in saying means of the complainant when disputed by accused is also one of the considerations as to existence of any legally enforceable debt or other liability. This judgment no way runs contrary to the three bench of the

---

<sup>1</sup> 2017 (2) ALT (Cri.) 279 (AP)

expression of the Hon'ble Apex Court in ***Rangappa Vs. Sri Mohan***<sup>2</sup>, regarding the presumption of passing of consideration under section 139 r/w 118 of the NI Act, once the cheque is routed from the account and proved as issued by the accused. Here no doubt he is disputing very giving of the cheque and signature thereon though not disputing the cheque routed from the account.

4. Having regard to the above, these matters require trial and otherwise petitioner got a liberty as per the expression of the Apex Court in ***Bhushan Kumar Vs. State (NCT of Delhi)***<sup>3</sup>, of raising such contentions by filing such application as is filed before the Court before the lower court.

5. Accordingly and with the above observations, 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**

**13.10.2017**  
**SS**

---

<sup>2</sup> AIR 2010 SC 1898

<sup>3</sup> (2012) 5 SCC 424