

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.1222 OF 2017

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C by the petitioner/accused, seeking to quash the proceedings in C.C.No.1 of 2017 on the file of the XXIV Metropolitan Magistrate, Cyberabad at Kukatpally, where the learned Magistrate taken cognizance for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act), which is an outcome of the private complaint of the 2nd respondent.

Heard learned counsel for the petitioner and learned Public Prosecutor appearing for the State, before ordering notice to respondent No.2/ de facto complainant and perused the grounds in the criminal Petition, complaint, exchange of legal notices and notice issued by the petitioner to the Bank to stop payment saying the cheque was lost and relied on Raj Kumar Khurana v. State of (NCT of Delhi) and another¹, wherein it was observed that dishonoured cheque was reported as lost and Section 138 creates a legal fiction of deemed commission of offence when a cheque is dishonoured either due to insufficiency of funds or the amount mentioned in the cheque exceeds the amount arranged to be paid. However, the fiction does not extend to lost cheque and hence

¹ (2009) 6 SCC 72

dishonour of cheque on this ground does not constitute an offence under Section 138 of the Act. In fact, it is the defence of the petitioner that the conquer was lost and he issued notice to the Bank. There is a fact finding involved and this Court cannot go into but for if at all to raise the said defence before the trial Court including from the expression in Bhushan Kumar v. State (NCT of Delhi)². Such a contention even can be raised if the trial Court is able to dispose of Section 251 Cr.P.C. examination.

Accordingly, the Criminal Petition is disposed of. It is left open to raise all the defences of the accused before the trial Court for the fact finding required to be given. Needless to say, if at all the petitioner unable to attend the Court regularly, he can file an application under Section 205 Cr.P.C. and the learned Magistrate shall consider the same on own merits.

Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 08-08-2017

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² 2012(5) SCC 424