

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.8229 of 2014

ORDER:

The petitioner/accused of C.C.No.60 of 2014 pending on the file of Judicial Magistrate of First Class, Manuguru, which is outcome of the private complaint of the 2nd respondent for the offence under Section 138 of Negotiable Instruments Act (for short 'the Act'), maintained the quash petition seeking to quash the proceedings.

Heard learned counsel for the petitioner/accused and also the learned counsel for the 2nd respondent-defacto complainant and perused the grounds urged in the quash petition and the private complaint averments and list of documents enclosed to the private complaint and the cognizance taken.

The complainant is by name Amrutha Agencies represented by its Manager Saini Venkateswara Rao and the accused is K.Koteswara Rao, Proprietor of Sri Venkata Kanaka Durga (SVKD) Lorry Transport. It is as per the said private complaint for the dishonour of cheque filed under Section 200 Cr.P.C. for the offence under Section 138 of the Act averred that accused, proprietor of SVKD Lorry transport is closely acquainted with the complainant and out of acquaintance both entered into agreement dated 26.05.2012 thereunder complainant has to provide diesel for 6 lorries with full tank and accused to pay diesel bills by 8th and 23rd day of every month without fail and the accrued bill is Rs.8,50,000/- till month of April 2013 and complainant demanded for payment of the same as stipulated in the agreement and the

accused prolonging on one pretext or the other and ultimately issued cheque bearing No.151266 dated 06.05.2013 drawn on SBH, Manuguru Branch, and when complainant presented said cheque in his account and the same was dishonoured and legal notice was issued and the postal cover is returned as refused.

A perusal of the cheque in question shows it was issued in the name of Amrutha Agencies, Bandrugudem, and it was drawer of the cheque K.Koteswara Rao, Proprietor of SVKD Lorry Transport. The cheque is thus not drawn in the name of signee Venkateswara Rao, the person who filed the complaint on behalf of the Amrutha Agencies, but in the name of Amrutha Agencies. The said signee Venkateswara Rao who signed the complaint is referred as Manager of Amrutha Agencies and so far as Amrutha Agencies entity concerned in the list of documents, there is no authorization letter filed and in any of the contents of complaint, there is nothing to show S.Venkateswara Rao is authorized as Manager of Amrutha Agencies to file the complaint and there is nothing even to say there is power of attorney and there is no even any verification for the complaint, thereby the filing of the complaint and taking of cognizance of the learned Magistrate is unsustainable and sufficient to say the cognizance taken by the learned Magistrate is liable to be quashed by relegating back the complaint to the trial Court to pre-cognizance stage and if at all duly complied with and explained for the delay till date to represent by duly filing the same with any power of attorney or specific authorization, then on own merits to decide.

Accordingly and in the result, the Criminal Petition is disposed of with above directions.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.09.2017
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