

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

CRIMINAL PETITION No.6552 OF 2017

ORDER:

Heard learned counsel for the petitioner/accused of C.C.No.206 of 2016 on the file of learned I Special Magistrate, Cyberabad at Malkajgiri and also the learned public prosecutor, representing the 1st respondent – State, before ordering notice to the 2nd respondent and perused the averments in the quash petition.

2. The contention of the petitioner is that in the private calendar case registered, taken cognizance for the offence punishable under Section 138 N.I.Act and the trial is in progress and in the course of trial, from the documents placed on record itself established that there is no validly issued statutory notice for the dishonour of the cheque in question for approval of cause of action to take cognizance and the cognizance taken is unsustainable.

3. The Hon'ble Apex Court in ***Bhushan Kumar Vs. State (NCT of Delhi)***¹ and ***Arvind Kejriwal & Others Vs. Amit Sibal and another***², referring to Section 251 and 190 Cr.P.C., observed that the court got power even during examination under Section 251 Cr.P.C., if no case made out

¹ 2012 (5) SCC 424

² 2014 SCC online Del 212

to acquit the accused even cognizance taken in a summons case or summary trial case as the case may be.

4. Though Section 258 Cr.P.C. for stoppage of proceedings is confined to the police case and not on private complaint case, the Magistrate got the power from the evidence on record to acquit the accused at any stage pending trial.

5. Having regard to the above, this criminal petition is disposed of, giving liberty to the petitioner, by virtue of this order, to file application before the learned Magistrate from the evidence on record if no further trial required to acquit for the learned Magistrate to consider and pass appropriate orders on own merits, within one month from the date of filing of the petitioner with reference to this order.

6. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO,J

01.08.2017
SS