

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.5448 OF 2017

ORDER:

1 This petition is filed under Section 482 Cr.P.C to quash the proceedings against the petitioner in C.C.No.231 of 2016 on the file of the Court of the Special Magistrate, Cyberabad at Hayathnagar.

2 The learned counsel for the petitioner submitted that the second respondent filed a fabricated promissory note along with the chief examination affidavit. He further submitted that the trial Court, without applying its mind, marked Ex.P.6 in the chief examination affidavit of P.W.1. He further submitted that the allegations made in the complaint do not constitute any offence much less the offences alleged to have been committed by the petitioner.

3 As per the allegations made in the complaint, the petitioner herein issued a cheque bearing No.909380 dated 16.11.2015 for an amount of Rs.10.00 lakhs drawn on ING Vysya Bank, Dilsukhnagar Branch, Hyderabad in favour of the second respondent. The second respondent presented the said cheque for collection on 21.11.2015 in Central Bank, Vanasthalipuram branch for collection. The cheque was returned with an endorsement 'account closed'. The second respondent got issued a notice on 07.04.2015 directing the petitioner to pay the amount covered under the cheque within 15 days from the date of receipt of the notice, failing which legal

consequences would follow. For one reason or the other, the petitioner neither issued reply notice nor paid the amount. Having no other alternative, the second respondent filed a complaint under Section 200 Cr.P.C. against the petitioner for the offences punishable under Sections 138 and 142 of N.I.Act.

4 A perusal of the record reveals that the second respondent herein filed chief examination affidavit where under Ex.P.1 to P.6 were marked. The predominant contention of the learned counsel for the petitioner is that the second respondent filed a fabricated promissory note i.e. Ex.P.6.

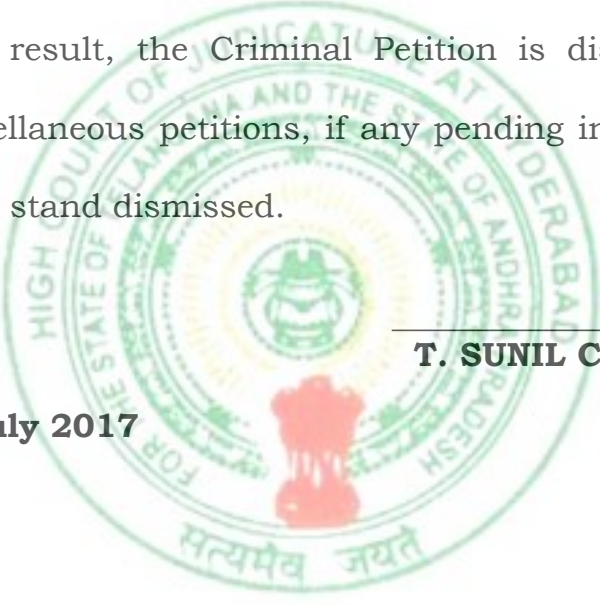
5 I have carefully scanned the material placed before the Court. A perusal of the record clearly reveals that the cheque issued by the petitioner was dishonoured on the ground 'account closed'. A perusal of the record further reveals that the second respondent strictly adhered to the procedure contemplated under Section 138 of N.I.Act while filing the complaint. The learned Magistrate, after satisfying himself with the material placed before him, has taken cognizance of the offence under Section 138 and 142 of N.I.Act and numbered the case as C.C.No.231 of 2016 and issued summons.

6 Whether the promissory note is executed by the petitioner in favour of the second respondent or not is purely a disputed question of fact, which cannot be gone into while exercising jurisdiction under Section 482 Cr.P.C. The various contentions raised by the learned counsel for the petitioner involve complexity of disputed questions of fact, which can be decided

only after full fledged trial. Merely because the second respondent did not file Ex.P.6 promissory note along with the complaint, by itself is not a valid ground to quash the proceedings against the petitioner. If this court expresses any opinion, touching the merits of the main case, the same may cause prejudice to one of the parties to the proceedings.

7 Having regard to the facts and circumstances of the case on hand, I am of the considered view that this is not a fit case to quash the proceedings at this stage.

8 In the result, the Criminal Petition is dismissed. As a sequel, miscellaneous petitions, if any pending in this Criminal Petition shall stand dismissed.



T. SUNIL CHOWDARY, J.

Date: 10th July 2017

Kvsn