

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.815 of 2017

ORDER :

The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') requesting to quash the proceedings in C.C.No.316 of 2016 pending on the file of the Judicial First Class Magistrate, (Special) Mobile Court, Ongole. The petitioner alleged to have committed the offence punishable under Section 138 read with 142 of the N.I.Act.

2. Heard Smt. A.Bala Bharathi, learned counsel for the petitioner and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

3. The learned counsel for the petitioner, while submitting the innocence and false implication of the petitioner, urges that it is purely a civil dispute and with regard to bouncing of the cheque is concerned, a complaint was lodged by the de facto complainant/2nd respondent. She further stated that the cheque was obtained by the de facto complainant in the police custody perforce and in fact, the petitioner instituted I.P.No.52 of 2014 before the Senior Civil Judge, Ongole, to whom all he is indebted along with the relevant particulars and the name of the de facto complainant is also shown in the schedule. The same defence has been taken by the petitioner herein. Admittedly, no pro-order is said to have been issued by the Insolvency Court, as no details thereof are forthcoming.

4. Though, the learned counsel urges that the cheque was obtained by the de facto complainant perforce while the petitioner was in police custody, the said ground is not agitated anywhere in the petition, which the learned counsel also admits. On the other hand, a perusal of the complaint would clearly show that the petitioner admits issue of cheque and his defence is that due to loss sustained in the business, he is facing financial crisis and that was the reason for his non-failure to discharge the debt contracted from the de facto complainant. The mere fact of filing Insolvency Petition is no ground either to stall or stifle the prosecution under Section 138 of the N.I.Act. There is no merit to quash the proceedings acceding to the request of the petitioner.

5. Accordingly, the criminal petition is dismissed at the admission stage itself.

6. Miscellaneous petitions pending, if any, shall stand dismissed.

A. SHANKAR NARAYANA, J

3rd February 2017.

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