

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.5499 of 2011

ORDER:

This petition is filed seeking for quash of the proceedings against the petitioner, who is accused in C.C.No.61 of 2012 on the file of the Additional Judicial Magistrate of First Class, Gudivada, Krishna District.

2. Heard the counsel for the petitioner; Public Prosecutor appearing for the 1st respondent; and the counsel appearing for the 2nd respondent.

3. The counsel for the petitioner is on two grounds, with regard to quash of the proceedings. The first being that the complaint is premature. He relies on the stamp that is affixed on the acknowledgment, which is understood to be 07.01.2012 by the court, as the said date is mentioned as the date of postal acknowledgment, on its docket. But the counsel for the 1st respondent now contends that the notice being sent on 22.12.2011, it takes maximum two or three days for service and the postal department has to keep the postal cover for only seven days under Rule 74 of the Indian Postal Rules and that the said date might pertain to the date of receipt of the acknowledgment by the post office. Hence, by virtue of the said argument, the said question turns to be a question of fact, which has to be decided only after taking in sufficient evidence.

4. The other contention of the counsel for the petitioner is that the debt is not a legally enforceable debt as the sale agreement-cum-GPA was executed on 06.08.2008 and the cheque was issued on 06.08.2008 as per the contents of the complaint and hence it is beyond limitation. But in the considered opinion of this court the said understanding is totally misconceived. The cheque was no doubt issued on 06.08.2008, but it was post dated as 01.12.2011, which was within the period of the life of the cheque by the time of dishonour. Hence, the said contention is also not merited.

5. In view of the above, this Court opines that this is not a case fit for quash. However, the plea of the petitioner's counsel to dispense with the presence of the petitioner can be considered and the Court below is directed not to insist upon the presence of the petitioner unless it is necessary for the proceedings of the case.

6. With the above observations, the Criminal Petition is dismissed. Interim stay granted by this court on 14.06.2013 shall stand vacated.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J

December 12, 2017
LMV