

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.6607 of 2013

ORDER:

The criminal petition is filed seeking for quash of the proceedings in CC.No.9 of 2013 on the file of the IX Metropolitan Magistrate, Cyberabad, Miyapur. The offence alleged in the complaint is under Section 138 of the Negotiable Instruments Act (for short 'the Act').

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor, who takes notice for respondent No.1. None appears for the second respondent in spite of notice.

3. This is a peculiar case where after receiving the notices from the complainant, calling upon the petitioner to discharge the debt due under the cheque, the petitioner herein issued a reply, along with a banker's cheque, for the amount under the cheque, which is Rs.1 lakh. However, it appears that the complaint was filed to meet the challenge posed by the petitioner in the reply notice stating that the complainant shall file a complaint and if the cheque is proved to be false, he shall initiate action against the petitioner.

4. The averments in the complaint are to the said effect. The banker's cheque, however, is not disputed as having been issued. Hence, the liability under the said cheque stands discharged by the time the complaint is filed. Hence, the petitioner cannot be prosecuted for the offence under Section 138 of the Act as no enforceable debt remains under the cheque by the date of filing of the complaint. Hence,

the continuation of further proceedings against the petitioner would only be an abuse of process of law.

The criminal petition is allowed and the further proceedings in CC.No.9 of 2013 on the file of the IX Metropolitan Magistrate, Cyberabad, Miyapur, against the petitioner, are hereby quashed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

December 8, 2017
DSK

T. RAJANI, J

