

HON' BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.9812 of 2017

ORDER:

Heard the learned counsel for the petitioners/ A1 to A3 and the learned Public Prosecutor representing the State.

The petitioners are A1 to A3 in C.C.No.350 of 2017 on the file of the I Special Magistrate, Cyberabad, Kukatpally at Miyapur, which is outcome of the private complaint of the 2nd respondent- ICICI Bank Ltd., for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act'), originally filed before the 58th Metropolitan Magistrate, Bandra, Mumbai, and the same was later transferred to the present IV Additional Junior Civil Judge-cum-XXV Metropolitan Magistrate, Cyberabad, Kukatpally at Miyapur, which is taken cognizance by entertaining the same and in re-submission of the complaint returned from Mumbai, in presenting before the Court, it appears, there is a delay of 105 days and there is an application filed and the same, after contest including by the petitioners/ A1 to A3 herein, was allowed by the learned Magistrate and against which there is a revision, which is stated pending before this Court in CrI.R.C.No.1224 of 2017, thereby, whether entertaining of the complaint by condoning the delay of 105 days is justified or not is *subjudice* in CrI.R.C. pending, no way requires to discuss or to deal with the present quash petition, by encroaching into the area of pending revision, before the another Bench.

So far as the jurisdiction aspect and as some of the accused are not drawers of the cheque with no liability and there is no legally enforceable debt or other liability etc., contentions are concerned, the petitioners are given liberty, by virtue of this order, to file an application before the trial Court to urge the same under Section 251 Cr.P.C. by following the expression of the Apex Court in Bhushan Kumar v. State (NCT of Delhi)¹, as entire material is available with the trial Court.

So far as the dismissal of the warrants issued against the petitioners is concerned, by virtue of this order, the petitioners shall appear before the learned Magistrate concerned and execute bonds as contemplated by Section 88 Cr.P.C. with or without surities for their future due appearance, which is suffice to apply by the lower Court even the warrants of recall petitions are dismissed.

Accordingly, the Criminal Petition is disposed of.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 26.10.2017

Note:

Issue C.C. in two days.

B/ o.

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¹ 2012(5)SCC 424