

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Criminal Petition No.411 of 2018

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioners/A.1 & A.2, seeking to quash the proceedings against them in C.C.No.656 of 2017 on the file of the II Additional Chief Metropolitan Magistrate, Visakhapatnam.

2. Heard the learned counsel for the petitioners/A.1 & A.2, learned Assistant Public Prosecutor representing the 1st respondent-State and perused the record.

3. The learned counsel for the petitioners/A.1 & A.2 would submit that the petitioner/A.2 gave the cheques to the complainant in his personal capacity. He did not give cheques on behalf of the company, which entered into a contract with the complainant to carry on certain works. The subject debt is not a legally enforceable debt. The proceedings instituted under Section 138 of the Negotiable Instruments Act, 1881, against the petitioners/A.1 & A.2 are abuse of process of law and ultimately to allow the application.

4. On the other hand, the learned Assistant Public Prosecutor opposed for quashing the proceedings against the petitioners/A.1 & A.2 contending that there are specific and grave allegations against them.

5. In view of the rival contentions, the point for determination is as to whether the request of the petitioners/A.1 & A.2 can be acceded to.

6. A perusal of the complaint lodged before the learned II Additional Chief Metropolitan Magistrate, Visakhapatnam, reveals that as on 01.12.2016, an amount of Rs.37,59,058/- was due by the petitioner/A.1 – Palladium Infrastructures & Projects Limited, to the complainant. The complainant completed the works and the said amount is fallen in due by the petitioner/A.1. The petitioner/A.2 gave two cheques, viz., cheque No.684015, dated 23.01.2017, for Rs.8,00,000/- drawn on State Bank of India, Patna Branch, Bihar State; and, cheque No.684016, dated 21.02.2017, for Rs.7,00,000/- drawn on State Bank of India, Patna Branch, Bihar State to the complainant. When the said two cheques were presented for payment, they were dishonoured due to insufficient funds. Consequently, the complainant lodged a report and the same is pending in the above-referred Calendar Case.

7. The averments of the complaint reveals that those two cheques were given by petitioner/A.2 in due discharge of the works carried on by the complainant. Whether the cheques were given to the complainant for discharge of the legally enforceable debt or not, would only be determined after due trial. Continuation of proceedings against the petitioners/A.1 & A.2 would not amount to abuse of process of law. The law is well settled that this Court should invoke the jurisdiction under Section 482 of Cr.P.C. in the rare cases, where the circumstances show the innocence of the petitioner/s (accused). In the instant case, there are no such

circumstances to quash the proceedings against the petitioners/A.1 & A.2.

8. Accordingly, the Criminal Petition is dismissed.

Miscellaneous petitions, if any, pending in this Criminal Petition, shall stand closed.

Dr. SHAMEEM AKTHER, J

22nd January, 2018
Bvv

