

THE HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.7657 of 2017

ORDER :

The petitioner is accused in C.C.No.367 of 2015 on the file of the Judl.Magistrate of First Class, Mahabubnagar district, which is outcome of a private complaint of the 2nd respondent taken cognizance for the offence punishable under Section 138 of Negotiable Instruments Act (for short, 'the Act') and issued summons; same is now impugned by the petitioner with the contentions that the very taking of cognizance is unsustainable for no offence made out within the meaning of Section 138 of the Act, to make it punishable thereunder. For that the cheque placed reliance by the complainant enclosed at page No.6 to the quash petition bearing No.299855 drawn on State Bank of Hyderabad, Railway Station road branch, Shadnagar, for Rs.1,00,000/- dt.22.12.2013. It is referred as 'Pay self' to mean it is a self-cheque and there is no Payee much less Holder or Drawer in due course transferred either for consideration of the claim to the Holder in due course or even for collection to claim as Holder within the meaning under Sections 8 and 9 of the Act that is contemplated by Section 138(b) of the Act to constitute the offence of such cheque is issued to dishonour for insufficient funds under Section 138 of the Act. A perusal of the complaint averments no where shows any document of the self-cheque given to the complainant to claim either as Holder under Section 8 much less Holder in due course for consideration bonafide under Section 9 of the Act. In the absence of any document, it is hardly believable of the self-cheque was transferred to claim is for not Payee in the due course u/ sec.138 of the Act to constitute the offence. What the learned

counsel for the 2nd respondent-complainant draws attention of the Court to the statutory legal notice paras-2 and 3 where mentioned about cheque was given by the accused to the complainant. That is now in dispute. A non-giving of reply for that does not mean what was mentioned as true but for to draw inference of no defence including from the expression of this Court in Chapala Hanumaiah Vs. Kavuri Venkateshwarlu¹ with reference to Section 3 of the Indian Evidence Act. Once such is the case, mere mentioning in the legal notice will not give status to the self-cheque as the person in possession of it as a Holder in due course within the meaning of Section 138 (b) of the Act, in the absence of any document to say what was mentioned in the legal notice without foundation of any endorsement of any document independently cheque was given to claim as Holder in due course.

Having regard to the above, the Criminal Petition is disposed of rather than allowing by directing the trial Court to allow the petitioner to file application under Section 251 CrPC referring to the expression of the Apex Court in Bhushan Kumar Vs. State(NCT of Delhi)² where if the matter on record available with the lower Court as of date and not by fresh filing discloses any such document for the complainant to claim as Holder in due course within the meaning of Section 138(b) of the Act to sustain the proceedings, else to allow the petition by closing the complaint by virtue of this order. Pending miscellaneous petitions, if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:02.11.2018
vvr

¹ 1971 An.W.R.65

² (2012) 5 SCC 424