

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.7597 of 2011

ORDER:

This petition is filed, by the petitioner, who is the accused, seeking for quash of the proceedings, in C.C.No.561 of 2009 on the file of the court of II Additional Judicial Magistrate of First Class, Nellore. The offences alleged against the petitioners are under Sections 138 and 142 of N.I.Act.

2. Heard the counsel for the petitioners and the Public Prosecutor appearing, for the 1st respondent as well as the counsel for the 2nd respondent.

3. The counsel for the petitioners submits that, as per the averments of the complaint, the accused borrowed an amount of Rs.5,65,000/- from the complainant on 14.03.2009 and executed a promissory note and the cheques were issued on 10.03.2009, 12.03.2009 and 14.03.2009. The counsel further submits that from the above fact, it can be understood that there was no legally enforceable debt as on the date of issuance of the cheques.

4. The counsel for the 1st respondent furnishes a copy of the promissory note, on the reverse of which the numbers of the three cheques allegedly issued by the accused are noted. He further submits that the accused borrowed the amounts on various dates i.e., a sum of Rs.2 lakhs on 10.03.2009;

Rs.1,65,000/- on 12.03.2009; Rs.2 lakhs on 14.03.2009; and accepting all the above past considerations, he executed a promissory note on 14.03.2009.

5. Hence, in view of the above, this court opines that unless the truth of the facts is gone into, it cannot be straight away said that the cheques were not issued towards legally enforceable debt and also the contention that the fact that the cheques were presented three days after the issuance of the cheques would also throw a doubt on the case of the complainant also, cannot be gone into at this stage.

6. With the above observations, the Criminal Petition is dismissed. Considering the request of the petitioner's counsel the presence of the accused before the court below is dispensed with 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.

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

August 27, 2018
LMV

T. RAJANI, J