

SMT. JUSTICE T.RAJANI

CRIMINAL PETITION Nos.4414, 4416 & 4418 OF 2013

COMMON ORDER:

1. These three Criminal Petitions, under Section 482 of Cr.P.C., are filed by the Petitioner/Accused, seeking to quash the proceedings in C.C. Nos.469, 479 and 473 of 2012, pending on the file of the Court of I Special Magistrate, Erramanzil, Hyderabad (for short, 'the trial Court'), registered for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

2. All these three cases are taken up for common consideration as the parties are one and the same and all the cheques pertain to the same transaction.

3. Heard learned counsel for the petitioner, learned Public Prosecutor, appearing for the 1st respondent – State, and learned counsel for the 2nd respondent – *de-facto* complainant.

4. The transaction between the complainant and the petitioner pertain to the JCB Vehicle bearing No.JD 315 V. The petitioner purchased the said vehicle by obtaining loan from the complainant, promising to repay the said amount in regular installments, and, subsequently, failed to repay the said installments. Thereafter, in pursuance of the persuasions of the complainant, the alleged cheques were issued by the petitioner, towards discharge of his legally enforceable debt, which were dishonoured when they were presented for collection.

5. Learned counsel for the petitioner submits that the complainant has seized the vehicle, put it to auction, and realized the amount, which is due

to the complainant, and that the same is evident from the legal notice got issued by the complainant.

6. But, a perusal of the legal notice would show that the vehicle, which was repossessed by the complainant, was put to sale and the same was informed to the petitioner that the amount realized in the auction was not sufficient to meet the loan amount, which is due to the complainant, and the contention is that the petitioner was asked to discharge the said amount and remit the loss on the loan agreement and after regular persuasions the petitioner issued the instant cheques.

7. Learned counsel for the petitioner also relies on a judgment of the Apex Court in ***Damodar S. Prabhu Vs. Sayed Babalal. H¹***, wherein, it was held that when any complaint was filed pertaining to the same transaction, it is mandatory for the complainant to disclose that no other complaint has been filed, in any other Court in respect of the same transaction, and such a disclosure should be made in the sworn affidavit, which should accompany the complaint, filed under Section 200 of Cr.P.C. Learned counsel for the petitioner submits that no such affidavit was filed by the complainant in his complaints.

8. Learned counsel for the 2nd respondent-complainant submits that the complainant may not be aware of the judgment of the Apex Court in ***Damodar S. Prabhu¹*** and now a direction be given to the complainant to comply with the said mandate.

9. Hence, considering the above, these three Criminal Petitions are dismissed. The complainant is directed to file the sworn-affidavit as

¹ AIR 2010 (SC) 1907

mandated by the Apex Court in ***Damodar S. Prabhu***¹, and the trial Court shall receive the same and place it in record.

10. As a sequel, the miscellaneous petitions, if any pending, shall stand dismissed.

T. RAJANI, J

Date: 31.10.2018.

Note:

Issue C.C. by 01-11-2018.

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Note:

C.C. BY 01-11-2018

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