

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION Nos.3825 and 3895 OF 2018

ORDER:

The petitioners 1 and 2 herein are the respective accused in C.C.No.415 of 2017 on the file of the XXIV Special Magistrate Court, Erramanzil and C.C.No.326 of 2017 on the file of the IV Special Magistrate, Cyberabad, Kukatpally, which are outcome of the private complaints under Section 138 of the Negotiable Instruments Act of 2nd respondent-entity that were taken cognizance by the learned Magistrate concerned and at the post cognizance stage, the present quash petitions are filed by the petitioners/ A1 and A2 i.e., entity by name Variegate Projects Pvt. Ltd and its Managing Director, individually.

Though it is the contention that the cheques obtained in advance to supply transformers if any not supplied and the transaction with M/ s.BRG Energy Ltd is nothing to do with the transformers to be supplied by the complainant to A1-entity and there is no any debt or legally enforceable debt or other liability on the face of it for the learned Magistrate to take cognizance and thereby, cognizance orders in both the cases are liable to be quashed. The learned counsel for the petitioners placed reliance on the expression of the Apex Court in Indus Airways Pvt. Ltd v. Magnum Aviation Pvt. Ltd

(2014(12) SCC 539). No doubt, it has drawn the attention of this Court to one of the reply notices in C.C.No.415 of 217 filed by complainant to the statutory notice mentioned no liability and there are no transformers supplied and not liable and not to resort to file any case for the alleged cheque bounce. Having it is part of defence and premature for this Court but for to say the complainants in both the cases could not even filed any prima-facie document about the complainant supplied to the accused through the other entity as consideration for the cheques obtained the so called transformers, if so, on what value, under what bills, or delivery orders etc. However, it is a factual dispute to be adjudicated before the trial Court and not a case for ready quashing.

Accordingly, the Criminal Petitions are disposed of with the liberty to the petitioners to file an application under Section 251 Cr.P.C. before the learned Magistrate and even Section 251 Cr.P.C. examination completed, as per the expressions of the Apex Court in Bhushan Kumar and another v. State (NCT of Delhi)¹ and Arvind Kejriwal and another v. Amit Sibal and another², remedy is left open to decide in the course of progress of trial, even after evidence of the complainant/ PW.1 and as both the cases involve the same

¹ 2012(5) SCC 424

² 2014 DLT 489

issue, C.C.No.326 of 2017 on the file of the IV Special Magistrate, Cyberabad, Kukatpally is transferred to decide along with C.C.No.415 of 2017 on the file of the XXIV Special Magistrate Court, Erramanzil Hyderabad.

Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 10.12.2018
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