

SMT JUSTICE T.RAJANI

CRIMINAL PETITION No.1039 OF 2013

ORDER:

1. This Criminal Petition, under Section 482 of Cr.P.C. is filed by the Petitioner/Accused No.1 seeking to quash the proceedings in C.C. No.129 of 2012, pending on the file of the Court of I Additional Judicial Magistrate of First Class at Proddatur, Kadapa District (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. Heard learned counsel for the petitioner, learned Public Prosecutor, appearing for the 1st respondent – State, and learned counsel for the 2nd respondent – complainant.

3. The case of the complainant is that he approached A-1 for supply of old iron scrap and an advance was demanded by A-1 for which the complainant issued a cheque bearing No.037884, for Rs.20,00,000/-, in the presence of mediators. At the time of receiving the said cheque from the complainant, A-1 stated that the material *i.e.*, old iron scrap would be supplied to the complainant through A-2 and requested him to issue the cheque in favour of A-2 *i.e.*, ALLA INC Company and, accordingly, the cheque was issued in the name of A-2 and handed over the same to A-1. Thereafter, the said cheque was encashed by A-2 but the old iron scrap was not supplied to the complainant, as promised. When the complainant demanded A-1 and A-2 to supply old iron scrap, then A-1 promised that he will be responsible for the amount taken by A-2 and due to the pressure mounted by the complainant A-1 got issued a cheque bearing No.701682, dated 26.06.2011, for Rs.18,00,000/- on behalf of A-2. But the same was returned un-paid with the endorsement '*funds insufficient*'. Thereafter, the

complainant got issued legal notice dated 26.11.2011 to A-1 and A-2 but they did not give any reply, hence, the complaint.

4. Learned counsel for the petitioner submits that A-1 did not receive any amount from the complainant and that it is A-2 in whose favour the cheque was issued and encashed the cheque issued by the complainant.

5. The averments in the complaint would show that the transaction was entered into between the Petitioner/A-1 and the complainant. Whether there was any legally enforceable debt between the petitioner and the complainant is a matter which has to be decided only after due trial. Since A-1 has issued the cheque, a presumption under Section 139 of the Act would arise, unless it is rebutted by the petitioner.

6. Hence, in view of the above, this Court opines that it is a matter for trial and not for quashing the proceedings against the Petitioner/A-1.

7. Accordingly, with the above observation, the Criminal Petition is dismissed.

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

T. RAJANI, J

Date: 10.12.2018.
Dsh

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Date. 10.12.2018

DSH