

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.4403 OF 2018

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C by the petitioner/ accused, seeking to quash the proceedings in C.C.No.33 of 2018 on the file of XIX Additional Chief Metropolitan Magistrate, Secunderabad, where taken cognizance for the offence punishable under Section 138 of the Negotiable Instruments Act, which is outcome of the private complaint of the 2nd respondent herein.

2. The above case was registered on the report of the 2nd respondent/de facto complaint alleging that when he presented the cheque bearing No.724496 dated 13.10.2016 for Rs.5,00,000/- drawn on State Bank of India, the same was dishonoured and the statutory notice running in 3 pages was given through advocate to the accused and in second page, it is specifically mentioned the cheque and its amount of Rs.5,00,000/- drawn on State Bank of India, Old MLA Quarters, Basheerbagh, Hyderabad, for discharge of legal debt and the cheque when presented dishonoured for insufficient funds as per the cheque return memo dated 17.10.2016 by further mentioning that he dishonestly and fraudulently represented and taken hand loan and issued cheque promising to pay the amount knowing very well that he has no balance in the account on the

above mentioned dates and it is nothing but cheating and committed the offence of cheating also and demanded to pay the said amount of money by giving notice in writing as the cheque issued returned unpaid to the extent, there is no much ambiguity much less to take a shelter but for in the last para which reads as follows:

“Therefore you are called upon by this notice to pay an amount of Rs.20,00,000/- (Rupees Twenty lakhs only) covered by the above cheque to my client along with interest of 24%p.a. within 15 days from the date of receipt of this notice failing which my client shall be constrained to initiate criminal prosecution against you under Sec.138 and 142 of N.I.Act and other appropriate legal proceedings for which you alone shall be held responsible for the costs and consequences.”
Therefore, you are called upon by this notice to pay the amount of Rs.20,00,000/- covered by the above cheque to my client along with interest @24%.....

3. The above clearly indicates a loose reference instead of saying ‘Rs.5,00,000/-’ as ‘Rs.20,00,000/-’ of the cheque amount as it specifically mentioned ‘the above cheque amount’, thereby, it is not a case of the cheque was not drawn and issued from the account, rooted from the account, not a case of cheque not presented and not dishonoured, not a case is not for Rs.5,00,000/- and a mistake mentioned typographically instead of Rs.5,00,000/- as Rs.20,00,000/- from not drawing proper attention in preparing notice by the learned counsel of the complaint will not make notice invalid. The two expressions placed reliance of K.R.Indira v. G.Adinarayana¹ and the expression of this Court in Matta Rambabu v. State of A.P.

¹ 2003(0) SCJ Online(SC) 521

(Crl.R.C.No.240 of 2004) are wrongly pointing out the statutory notice properly notice contemplated by Section 138 of the Act. Here it is not such a case. So the said expressions are not applicable to the instant case.

4. Accordingly the Criminal Petition is dismissed and the trial Court is directed to proceed with in deciding the matter on merits.

5. Miscellaneous petitions pending if any, shall stand closed.

Date: 05.11.2018
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Dr. B. SIVA SANKARA RAO, J

