

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.7086 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.237 of 2016 on the file of the Judicial Magistrate of First Class, Srikakulam District at Sompeta, where taken cognizance for the offences punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act').

2. Heard the learned counsel for the petitioner and perused the material on record. Though notice served on the 2nd respondent, he failed to attend.

3. The contentions in the quash petition are that the cheque presented after expiry of valid period and it no way contemplates the requirements under Section 138 of the Act and there is no valid statutory notice, thereby, the proceedings are liable to be quashed and cognizance could not be taken.

4. A perusal of the cheque shows it was given in the name of the de facto complainant by name S.Nathaniel and undisputedly it was signed by the petitioner/ accused herein by name Thotal Srinivasulu along with another name with no signature of Kameswari Thota.

5. It is the contention that on the reverse side of the cheque, there is a mention as this is the gift cheque only. It is the contention there from a gift cheque without consideration and when there is no legally enforceable debt, the question of presenting the cheque and dishonour and accrual of cause of action and filing of a complaint does not arise.

6. So far as the sufficiency of the notice concerned, a perusal of the notice shows the cheque dated 18.03.2012 for Rs.1,76,83,000/- given discharge of the debt due to the complainant by the accused and when presented through their bankers Axis Bank, Kasibugga Branch, returned with endorsement of 'insufficient funds' and he issued cheque knowing fully having no sufficient funds to honour and to defraud the complainant, thereby, demanded by way of notice to remit the money or deposit sufficient amount forthwith in the account to enable him to represent the cheque and encash the same. The word pay is not there but remit is the technical contention, if at all it is not a ground to quash the proceedings of the said C.C. but for such a defence if at all left open.

7. With the above observations, the criminal petition is disposed of rather than dismissal by left open all the defences. So far as the difficulty expressed of personal inconvenience for every adjournment from Nellore to Srikakulam at Sompet concerned, the petitioner can seek by virtue of this order to approach the trial Magistrate under Section 205 Cr.P.C. to represent through special vakalat holder for permission subject to personal appearance whenever required, more particularly, for Section 313 Cr.P.C. examination and defence evidence.

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

Dr. B. SIVA SANKARA RAO, J

Date: 31.10.2018
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