SMT JUSTICE T.RAJANI

CRIMINAL PETITON No.6977 OF 2013

ORDER:

This Criminal Petition, under Section 482 Cr.P.C., is filed seeking to quash the proceedings against the petitioner/accused in C.C.No.215 of 2013 on the file of Court of XXIV Special Magistrate, Erramanzil, Hyderabad, registered for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

2. The allegation in the complaint is that the complainant is a financial consultant and arranges funds through Banks to the needy entrepreneurs. Knowing the same, the accused approached the complainant and requested him to arrange a bank loan, for which the complainant agreed and entered into a Memorandum of Understanding (MOU) on 23.01.2012. As per the said MOU, the accused agreed to pay 4% of the total loan sanctioned by the banks as remuneration, to the complainant and accordingly, issued cheques drawn on SBI, Seethammadhra Branch, Visakhapatnam. Later, when the said cheques were presented in the Bank for realization, the same were returned with an endorsement "payment stopped by the drawer". When the complainant tried to contact the accused regarding dishonour of cheques, the accused has been avoiding and evading to pay the amount. Therefore, the complainant got issued a legal notice calling upon the accused to pay the amount covered by the cheques within 15 days from the date of legal notice. After receipt of the said notice neither the accused issued any reply nor paid the amount covered by dishonoured cheques. Hence, the complaint.

3. Heard learned counsel for the petitioner and the learned Public Prosecutor appearing for the State. None appears for respondent No.1.

4. Learned counsel for the petitioner/accused draws the attention of this Court to the Memorandum of Understanding and contends that as per the MOU, loan is to be provided through OBC bank, but as per the averments in the complaint, the loan was provided through IOB Bank. He further contends that, in fact, on the failure of the complainant to get loan sanctioned through OBC Bank, the petitioner himself obtained loan from IOB Bank. He also contends that the cheques were issued on the date of MOU itself. Therefore, unless the condition in the MOU is fulfilled, i.e. providing loan through OBC Bank, the cheques issued cannot be considered as having issued through a legally enforceable debt and hence, prays to set aside the proceedings.

5. This Court finds some force in the argument of learned counsel for the petitioner and came to the conclusion that continuation of the proceedings against the petitioner/accused in the aforesaid Calendar Case would result in abuse of process of law.

6. Accordingly, the Criminal Petition is allowed setting aside the proceedings against the petitioner/accused in C.C.No.215 of 2013 on the file of Court of XXIV Special Magistrate, Erramanzil, Hyderabad.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

T.RAJANI, J

AUGUST 28, 2018
YVL

SMT JUSTICE T.RAJANI

CRIMINAL PETITON No.6977 OF 2013

Date: 28.08.2018

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