

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7189 of 2017

ORDER :

Heard learned counsel for the petitioner. Notice served on the 2nd respondent-*de facto* complainant and perused the docket order of this Court, dated 21.08.2017, and compliance of the same by deposit of Rs.1,00,000/- that was received by the 2nd respondent with endorsement from the certified xerox copy of the Court order filed as additional material with extension application in CrI.M.P.No.10587 of 2017, dated 22.09.2017.

2. The grievance is, in the appeal filed before the lower appellate Court against the conviction judgment in C.C.No.509 of 2015 of the III Additional Chief Metropolitan Magistrate, Vijayawada, for the offence punishable under Section 138 of the Negotiable Instruments Act, no suspension of sentence order passed by the lower appellate Court and it is also the submission that out of the cheque amount for Rs.4,00,000/-, as per the trial Court's judgment ordering to pay fine of Rs.4,00,000/- as compensation, leave about its sustainability, Rs.2,00,000/- earlier deposited before the lower appellate Court and by virtue of the docket order of this Court, dated 21.08.2017 Rs.1,00,000/- paid to the *de facto* complainant endorsed on 19.09.2017. The lower appellate Court has to dispose of the suspension of sentence pending the appeal, if not chosen to hear the appeal including even in the absence of any parties on merits from the expression of the Three Judge bench of the Apex Court in **Bani Singh**

v. State of U.P.¹, the lower appellate Court is directed to dispose of the application for suspension pending the appeal, if not chosen to take up and hear the appeal, as early as possible.

3. With these observations, the criminal petition is disposed of.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

30th October 2018.

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¹ AIR 1996 SC 2439