

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.2047 of 2013

ORDER:

This criminal petition is filed for quash of the proceedings in CC.No.467 of 2012, against the petitioners, who are A1 to A3, on the file of the IX Additional Chief Metropolitan Magistrate, Hyderabad. The offence alleged is under Section 138 of the Negotiable Instruments Act.

2. The complaint is filed stating that A1 represented by A2 to A8 approached the complainant to avail trade finance amount of Rs.10,00,00,000/- for six months and the same was handed over by way of cheque. Later, on repeated demanded by the complainant, the accused came to the office of the complainant and issued two cheques as per the request made by the accused for repayment of the said loan and the said cheques, when presented for collection, were dishonoured.

3. The counsel for the petitioners, in support of this submission for quash of proceedings, draws the attention of this Court to the agreement that is entered into between the parties, wherein it is recited that post dated cheques have to be issued by the Managing Director of the company in order to secure the loan and he submits that it is those cheques, which are now used in this case. He further submits that the transaction is dated 29.07.2011 and the loan was sanctioned on 30.07.2011 and hence, it cannot be held that there was any legally enforceable debt as on the date of issuance of the cheque.

4. But the Supreme Court in *SAMPELLE SATYANARAYANA RAO v. INDIAN RENEWABLE ENERGY DEVELOPMENT AGENCY LTD.*¹

held as under:

“... As is clear from the above observations of this Court, it is well-settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The Court considering the prayer for quashing does not adjudicate upon a disputed question of fact ...”

In the light of the above, the criminal petition is dismissed. However, the plea of the counsel for the petitioners to dispense with the presence of the petitioners during trial can be considered by directing the Court below not to insist upon the presence of the petitioners unless it is necessary for the proceedings. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

October 10, 2018
DSK

T. RAJANI, J

¹ 2016 (2) ALD (CRL.) 809 (SC)