

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.10241 of 2018

ORDER :

The petitioner is the accused in the private complaint case in C.C.No.150 of 2017 on the file of the III Additional Judicial First Class Magistrate, Rajahmundry, instituted by the 2nd respondent entity for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') that was taken cognizance from the cheque presented dishonoured and not liquidated despite statutory notice from the accrual of cause of action and at the post cognizance stage issued summons and the present impugnement is in seeking to quash the said cognizance order.

2. It is one of the contentions that there is no any debt, much less legally enforceable debt to maintain the cheque case and that can be depicted from the material filed by the petitioner/accused, particularly the letter of Branch Manager of Kapil Chits (Kosta) Pvt. Ltd., dated 03.02.2016, from Srikakulam Branch and the other material. These are the disputed questions of fact to be adjudicated before the trial Court and that too when there are presumptions either under Section 118 or 139 of NI Act.

3. Having regard to the above and by following the expression of the Apex Court in **Bhushan Kumar and another v. State (NCT of Delhi) and another**¹, the criminal petition is disposed of, liberty is

¹ (2012) 5 SCC 424

given to the petitioner, from the difficulty expressed to attend personally for day-to-day adjournments, to approach the trial Court by filing application under Section 205 Cr.P.C. for permitting necessary conditions after hearing to represent through Special Vakalat holder.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

22nd November 2018.

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