

**HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**

**CRIMINAL PETITION No.11142 of 2018**

**ORDER :**

The petitioner is A.3, no other than the husband of A.2, one of the two partners both of A.1 firm undisputedly from the complaint averments. The petitioner is not a signatory as drawer of the cheque on behalf of A.1 partnership firm signed by A.2, no other than his wife supra, as per his contentions herein. The rubber stamp as partner in between the lines the signature put shows Apind Financial Services and it is not a proprietary concerned, but a partnership firm. It is a fact to be ascertained whether the bank account is in the name of the partnership firm or individual.

2. One of the contentions in seeking to quash the cognizance taken for the offence under Section 138 of the Negotiable Instruments Act against the three accused persons by the learned Magistrate on the complaint of the 1<sup>st</sup> respondent in allotting C.C.No.1515 of 2017, is that there was an agreement of sale, dated 16.08.2016 in the name of M/s.Apind Financial Services, represented by Proprietor Mrs. Shobhana D. Chari. It is therefrom contended that in the copy of agreement of sale supplied filed as Annexure IV, it is referred as M/s.Apind Financial Services, a proprietary concerned of Mrs.Shobhana D. Chari and not as partnership firm. It is also a matter to be decided as to any such fact, which is contrary to the complaint averments how far genuine of the so-called copy of the sale agreement if at all supplied to prove.

3. Having regard to the above, these factual disputes once there, this Court cannot *prima facie* quash the proceedings, but for left open all defences by filing appropriate application under Section 251 Cr.P.C. before the trial Court to decide, on own merits, from the law laid down in **Bhushan Kumar and another v. State (NCT of Delhi) and another<sup>1</sup>**, by virtue of this order, even Section 251 Cr.P.C. examination already completed, either before commencement or trial or during course of trial from the evidence sufficiently possible to appreciate. Liberty is given from the difficulty expressed to attend day-to-day adjournments either to file application under Rule 37 of the Criminal Rules of Practice or Section 205 Cr.P.C. to hear and pass appropriate orders by the learned Magistrate.

4. Accordingly, the criminal petition is disposed of.

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

**Dr. B. SIVA SANKARA RAO, J**

26<sup>th</sup> November 2018.

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<sup>1</sup> (2012) 5 SCC 424