

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**Criminal Petition No.11144 of 2017**

**ORDER:**

The petitioner is A2 among three accused in C.C. No.208 of 2017 on the file of the learned I Special Magistrate, Erramanzil, Hyderabad, which is outcome of the private complaint of respondent No.2 Bank registered for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') taken cognizance from the cheque allegedly returned dishonoured and after statutory notice with no reply not liquidated from the accrual of the cause of action. It is after service of summons, impugning the very cognizance the present quash petition is filed.

2. It is one of the contentions that the petitioner-M. Ramana Rao no way concerned with the present Firm by name M.S. Trading if at all any debt due by said Firm to the Bank, a secured debt already covered by the proceedings in O.A.No.780 of 2015 and the cheque is not supported by any legally enforceable debt or other liable within the meaning of Sections 138 & 139 of the Act and as such the cognizance order is liable to be set aside and the proceedings against the petitioner are liable to be quashed.

3. Respondent No.2 Bank supported the order of the learned Magistrate taken cognizance in saying, if at all there is any defence, it is left open to the accused during trial.

4. Heard the counsel for both sides and perused the material on record.

5. No doubt, in the expression of the Bombay High Court in **Kartik v. HDFC Bank Ltd** [Crl. Appl. Nos.4568 & 4569 of 2009] dated 21.11.2009, in Paragraph No.18 it is observed that if there was no any legally enforceable debt or other liability on the date of presentation and dishonour of the cheque, the continuation of the proceedings became futile exercise. There is no quarrel on the proposition, but for no way applicable to the facts from the settled law that even a little change in facts will tilt the result, for no precedents on facts more particularly in criminal cases for no two facts are same.

6. Now coming to the facts, undisputedly the cheque was rooted from the account of the petitioner-A2, who signed along with one Sumitra-A1. Once the cheque is rooted from his account and issued by him not without another person, if at all there is any factual aspect to be shown in saying there is no legally enforceable debt, it is a matter during trial for the trial Court to consider.

7. Having regard to the above, by left open all the defences this Criminal Petition is disposed of rather than dismissal. Miscellaneous petitions pending, if any, shall stand closed.

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

12.11.2018  
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