

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.12710 of 2017

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioner-accused seeking to quash the proceedings against him in C.C. No.49 of 2015 on the file of the Additional Judicial Magistrate of First Class, Tuni, East Godavari District, for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act.

2. Heard the learned counsel for the petitioner-accused, learned counsel for the 1st respondent-complainant and the learned Assistant Public Prosecutor representing the 2nd respondent-State, apart from perusing the material on record.

3. Learned counsel for the petitioner-accused would submit that the 1st respondent-complainant is unknown to the petitioner and he did not reside in Visakhapatnam; the statutory notice as required has not been served; the petitioner-accused did not give any reply to the notice; there is no cause of action; the petitioner-accused denied the transaction between the parties; and ultimately, prayed to quash the proceedings. He has relied on a decision of the Hon'ble Supreme Court in **Anita Malhotra v. Apparel Export Promotion Council and another**¹.

4. On the other hand, learned counsel for the 1st respondent-complainant supported the averments of the complaint and ultimately, prayed to dismiss the petition. Learned Assistant Public Prosecutor opposed the grant of relief sought by the petitioner.

¹ (2012) 1 Supreme Court Cases 520

5. In view of the contentions putforth by both sides, the point for determination is, whether the impugned proceedings can be quashed?

6. There is record to show that the petitioner-accused has not denied the signature on the impugned cheque and also did not dispute that the said cheque bearing No.322211 drawn on Indian Overseas Bank, NAD Junction Branch, Visakhapatnam, for a sum of Rs.2,00,000/-. As per the material placed on record, the copy of acknowledgment has not been filed before the Court below, but the 1st respondent-complainant had filed the copy of the information downloaded from the internet which shows the service of notice on the addressee on 30.01.2014. As per the copy of the promissory note filed before this Court, the address of the petitioner-accused is mentioned as Payakaraopeta village and Mandal of Visakhapatnam District. As per the averments in the complaint, a reply was given to the notice issued demanding the payment of cheque amount issued on behalf of the 1st respondent-complainant. The submission made on behalf of the 1st respondent-complainant is that the accused is Senior Auditor in the Accounts Office, A.O. (R & D), SBC Ship Building Centre, Visakhapatnam. Presently he is working as Senior Auditor in the Office of Comptroller of Defence Accounts (R & D), Kanchanbagh, Hyderabad. Whether the impugned cheque for Rs.2,00,000/- was given by the petitioner-accused in discharge of a legally enforceable debt is required to be decided after due enquiry. Further, when there is record to show the service of notice and the petitioner-accused was residing at Visakhapatnam, the allegations made in the complaint with regard to the issue of cheque, dishonour of the same for want of sufficient funds, issue of notice, etc., in the circumstances of the case, can only be determined after due enquiry. The facts and circumstances of the decision relied on by the learned counsel for the petitioner-accused and the facts and

circumstances of the instant case are distinct. Every case is required to be determined on its own merits and demerits. The contentions raised on behalf of the petitioner-accused do not merit consideration at this stage. The petition is devoid of merits and it is liable to be dismissed.

7. The Criminal Petition is dismissed accordingly. Pending Miscellaneous Petitions, if any, shall also stand dismissed.

8. Learned counsel for the petitioner-accused made a request to return the certified copies filed along with this Criminal Petition. The Registry is directed to return the same to the counsel on record on proper identification.

29th January, 2018
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Dr. SHAMEEM AKTHER, J