

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

**CRIMINAL PETITION No.546 of 2016**

**ORDER :**

Heard both sides.

The petitioner is accused in C.C.No.2061 of 2013 pending on the file of VIII Special Metropolitan Magistrate, Hyderabad, which is from the private complaint of the 2<sup>nd</sup> respondent for the offences punishable under Section 138 of the Negotiable Instruments Act.

It is impugning the cognizance order of the learned Magistrate, the quash petition is filed.

The contentions raised in the quash petition are that there is no accrual of cause of action to maintain the complaint much less to take cognizance by the learned Magistrate and it was not properly considered more particularly from the fact that the cheque in question not reached the drawer's bank and drawer's bank never issued the so called cheque returned memo and in the absence of any cheque presented and returned and proof in relation to that, the question of further consequences muchless accrual of cause of action does not arise and thereby, the proceedings are liable to be quashed.

It is in fact, a factual dispute to be agitated before the trial Court, if necessary in the progress of trial including if any by examination of the Bank Manager of the drawer's bank thereby, the petition is rather than dismissal, disposed of giving liberty to file application under Section 251 Cr.P.C. as laid down by the Apex Court in **Bhushan Kumar and another v. State of NCT, Delhi**<sup>1</sup>.

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

So that during the course of trial from any factual foundation, the trial Court can arrive a right conclusion in the evidence let in to it.

Miscellaneous petitions pending, if any, shall stand closed.

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

19.02.2019.  
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