

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.10222 of 2018

ORDER :

Heard learned counsel for the petitioner/accused in C.C.No.445 of 2015 pending on the file of VII Metropolitan Magistrate, Cyberabad at Hayathnagar, which is out come of the private complaint of the 2nd respondent, for the offence under Section 138 of the Negotiable Instruments Act (for short 'the Act'), taken cognizance by the learned Magistrate, from which summoned the accused. The said cognizance order, filed the quash petition and respondent No.2 even served notice, proof filed, failed to attend the Court, taken as heard.

Heard learned Public Prosecutor representing the 1st respondent and perused the private complaint and the grounds urged in the quash petition.

There is no dispute of the cheque leaf relates to the account of the accused, if at all it is the contention that that is a forged cheque and no consideration passed and cheque not given by the accused, it is a factual finding to be arrived during trial. The other contention of there is no accrual of cause of action for no service of notice and for accrual of cause of action under Section 142 read with 138 of the Act. There must be proof regarding service of notice and statutory waiting after service of notice within statutory period after cheque dishonoured returned memo received and thereby the cognizance order of the learned Magistrate is unsustainable is also a matter of defence left open before the trial Court.

Having regard to the above *prima facie* there is nothing to quash the proceedings in view of the disputed facts to be adjudicated by the trial Court, but for to say from the difficulty expressed by virtue of this order, the petitioner can move the trial Court under Section 205 Cr.P.C. to represent through special vakalat holder for the learned Magistrate to hear and pass appropriate orders including any necessity whenever directed for personal appearance that to after hearing the 2nd respondent/*de facto* complainant also.

Accordingly, the criminal petition is disposed of rather dismissal by left open all defences.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

28.01.2019
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