

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

**CRIMINAL PETITION No.2732 of 2014**

**ORDER :**

The petitioner is the accused in C.C.No.361 of 2013 pending on the file of the VII Special Magistrate at Hasthinapuram, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I.Act'), which is out come of private complaint of the 1<sup>st</sup> respondent-complainant, that was taken cognizance from the so-called dishonour of the cheque for alleged legally enforceable debt or other liability and even after dishonour from issuance of statutory notice from non-payment, from accrual of cause of action filed the complaint that was taken cognizance for the offence supra and after summons issued, he filed the quash petition impugning the same.

2. The main contention is that there is no any legally enforceable debt or other liability within the meaning of Section 138 and 139 of the N.I. Act to enforce or to take cognizance and even from the Memorandum of Understanding between the parties, there is no liability *prima facie*, thereby the proceeding is liable to be quashed.

3. Whereas it is the submission of the learned counsel for the 1<sup>st</sup> respondent/complainant that the learned Magistrate has already taken cognizance and if at all he has any defence, to make such defence during trial and there are no grounds to quash.

4. Heard and perused the material.

5. As it is a factual dispute that is to be adjudicated before the trial Court, this Court cannot readily quash the proceeding by prejudging

the issue, but for left open if necessary to file an application under Section 251 Cr.P.C. before the trial Court if necessary by recording any evidence pending trial to consider the same as laid down by the Apex Court in **Bhushan Kumar and another v. State (NCT of Delhi) and another**<sup>1</sup>.

6. Accordingly, the criminal petition is disposed of.

Miscellaneous petitions pending, if any, shall stand closed.

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

6<sup>th</sup> February 2019

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