(2012) 02 AP CK 0064

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 1470 of 2012

Pasam Prabhu Das — APPELLANT

Vs

M/s. Sri Swastik Financer, and The State of A.P. — RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2012) 02 AP CK 0064

Hon'ble Judges : K.C. Bhanu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.C. Bhanu

1. This Criminal Petition, u/s 482 of the Code of Criminal Procedure, 1973, is filed to quash the proceedings in C.C.No.582 of 2007 on the file of the VI Additional Munsiff Magistrate, Guntur.

2. The case of the prosecution is that on 22.08.2005 and on 24.08.2005 the petitioner borrowed an amount of Rs. 60,000/- from respondent No.1 by executing two promissory notes agreeing to repay the same with interest @ 24% per annum. Thereafter, on demand made by respondent No.1 company, the petitioner issued a cheque for Rs. 61,400/- in favour of respondent No.1 drawn in favour of Andhra Bank, Arundelpet, Guntur. Subsequently, on 27.09.2005, respondent No.1 presented the said cheque for collection. But, the said cheque was dishonoured for the reason "Funds Insufficient" and the same was returned on 28.09.2005 along with memo. Thereafter, respondent No.1 issued a legal notice to the petitioner u/s 138 read with 142 of the Negotiable Instruments Act, 1881 (for short, '' the Act'') calling upon him to pay the cheque amount within fifteen days from the date of receipt of notice. But, the same was returned on 05.11.2005.

3. Learned counsel for the petitioner contended that respondent No.1 is doing illegal business without any licence; that no certificate of registration was filed to show that respondent No.1 got licence to run the finance business; that therefore, continuation of proceedings is nothing but abuse of process of Court and hence, he prays to quash the proceedings.

4. The essential ingredients u/s 138 of the Act are there must be a debt or other liability legally enforceable (a) that cheque must be given by the debtor in favour of creditor in discharge of the said debt or liability, in whole or in part (b) that cheque should be returned by the bank for in sufficient of funds to the credit of the debtor to honour the cheque.

5. According to the complaint, respondent No.1-de facto complainant lent an amount of Rs. 60,000/- to the petitioner, for which the petitioner executed two promissory notes. On demand made by respondent No.1, the petitioner issued cheque for Rs. 61,400/-. When it was presented in the Bank, it was returned as ''Funds Insufficient''. After giving statutory legal notice, the complaint was lodged. Whether respondent No.1 is entitled to do finance business or not and whether it got licence to run the finance business, are the matters to be resolved during the course of trial before the Court below. Exercising the powers u/s 482 Cr.P.C., a question of fact cannot be adjudicated. Therefore, on the said ground, the complaint cannot be quashed.

6. Accordingly, the Criminal Petition is dismissed.