

HON'BLE SMT. JUSTICE ANIS
CRIMINAL PETITION No. 6109 OF 2012

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') by the petitioner requesting to quash the proceedings in C.C.No.169 of 2012 on the file of the learned I Special Metropolitan Magistrate, Hastinapur, Rangareddy District.

2. The case of the petitioner is that the second respondent, filed a private complaint on 31.10.2011 against the petitioner herein alleging that the petitioner availed a hand loan amount of Rs.1,41,000/- from the second respondent on 15.03.2011 with a promise to return the amount within three months. After repeated requests made by the second respondent, the petitioner herein gave a cheque bearing No.597350 dated 07.07.2011 for Rs.1,41,000/-. The second respondent presented the cheque dated 07.07.2011 for Rs.1,41,000/- and the same was dishonoured on 08.07.2011 with an endorsement 'stop payment'. Again the second respondent herein presented the said cheque on 01.08.2011 and the same was returned with an endorsement 'payment stopped by the drawer'. Consequent to the dishonour of the cheque, the complainant got issued a demand notice on 07.09.2011 by giving 15 days time for re-payment. As the petitioner failed to pay the amount, the second respondent filed the present private complaint before the III Metropolitan Magistrate, Cyberabad at L.B.Nagar for an offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short 'N.I.Act') and the same was registered as C.C.No.158 of 2011 and renumbered as C.C.No.169 of 2012 on the file of I Special Metropolitan Magistrate, Hasthinapuram, Rangareddy District.

3. Now, the present petition is filed by the petitioner for quashing

the proceedings in C.C.No.169 of 2012 on the file of I Special Metropolitan Magistrate, Hastinapur, Rangareddy District on the ground that the complaint itself is barred by limitation.

4. Now, the point for determination is –

Whether the petitioner/A.1 has made out any valid or sufficient grounds for quashing the proceedings as prayed for?

5. **Point:**

Section 138 and 138(b) of N.I.Act reads as follows:

Section 138: Dishonour of cheque for insufficiency, etc., of funds in the account—

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless---

b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

6. The learned counsel for the petitioner argued that admittedly the cheque was returned unpaid for the second time with an endorsement on 03.08.2011. Hence the statutory notice has to be given on or before 01.09.2011. But the statutory notice was issued by the complainant on 07.09.2011. Hence the complaint is liable to be quashed as mandatory requirement under Section 138(b) of N.I.Act was not complied with.

7. A perusal of the complaint itself shows that the petitioner herein who is the accused issued a cheque bearing No.597350 dated 07.07.2011 drawn on Andhra Bank, Nizampet Branch and the complainant presented the cheque on the same day in State Bank of Hyderabad, Saifabad Branch, Hyderabad for encashing the said cheque amount and the said cheque was returned with an endorsement 'stop payment' by the drawer and the said cheque was returned with memo dated 08.07.2011 to that effect. Again the complainant/R.2 presented the said cheque for the second time on 01.08.2011 before the same bank wherein it was returned with an endorsement 'payment stopped by the drawer'. That said cheque was returned with memo dated 03.08.2011 to that effect. The complainant instead of issuing the notice on 03.08.2011 issued the legal notice on 07.09.2011. Thus, the complainant has not complied the provisions of Section 138(b) of the N.I.Act. Therefore, it is clear that the complaint is barred by limitation and liable to be dismissed. In view of the above facts and circumstances, proceedings against the petitioner in C.C.No.169 of 2012 on the file of I Special Metropolitan Magistrate, Hastinapur, Rangareddy District are liable to be quashed. The point is accordingly answered in favour of the petitioner/accused.

8. In the result, the Criminal Petition is allowed and the proceedings against the petitioner/accused in C.C.No.169 of 2012 on the file of I Special Metropolitan Magistrate, Hastinapur, Rangareddy District, are hereby quashed.

9. Miscellaneous petitions pending, if any, in this Criminal Petition shall stand closed.

ANIS, J

Date: 12.02.2015
PNV