

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Petition No.4628 of 2012

ORDER:

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This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 is filed by the petitioner/Accused requesting to quash the proceedings against him in STC.No.53 of 2012 on the file of the Court of the Judicial Magistrate of First Class, Palamaner of Chittoor District taken on file for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('the Act' for short).

2. I have heard the submissions of the learned counsel for the petitioner/accused, the learned Additional Public Prosecutor appearing for the 1st respondent/State and the learned counsel appearing for the 2nd respondent/complainant. I have perused the material record.

3. Now the points for determination are:

Whether the petitioner/accused had made out valid and sufficient grounds for quashing the proceedings against him in STC.No.53 of 2012 on the file of the Court of the Special Magistrate, Palamaner?

Whether the uncontroverted allegations made in the complaint do not disclose *prima facie* the commission of any offence much less the alleged offences and make out a case against the petitioner?

4. **POINTS:**

4. (a) The complainant/2nd respondent herein filed a private complaint under Section 200 of the CrPC read with Section 138 of the Act against the petitioner for the offence punishable under Section 138 of the Act. In the said complaint, it is alleged as under: 'The petitioner borrowed Rs.2,95,000/- from the complainant on 29.10.2011 as hand

loan for business purposes. On receiving the said loan amount, the accused had issued on the same day, a cheque for Rs.2,95,000/- drawn on State Bank of Mysore, Madanapalle where the accused is having an account. The accused requested the complainant to present the said cheque to the bank of the complainant one month after the said date and had further promised to arrange funds by that time for honouring the said cheque. However, when the said cheque was presented by the complainant through his banker viz., Sapthagiri Grameena Bank, Sankarayalapeta branch on 13.12.2011, the said cheque was dishonoured and returned with a memo dated 16.12.2011 issued by the banker of the accused showing the reason for return as 'funds insufficient'. The dishonoured cheque and the said memo were given to the complainant by his banker along with a memo dated 16.12.2011. The complainant had issued a statutory notice dated 28.12.2011. The same was served on the accused. The accused did not comply with the demand in the notice.'

4. (b) Now the accused/petitioner is requesting to quash the proceedings in the said summary trial case on the basis of the following contentions: 'There is no truth in the version of the complainant. The petitioner filed a private complaint in CC CFR No.1562 of 2012 on the file of the Court of the Judicial Magistrate of First Class, Madanapalle. In the said complaint of the petitioner, it is stated by him that once he had served as Vice President of the village and that he was having an account in State Bank of Mysore, Madanapalle since several years and that on 24.10.2011 while proceeding from Basinikonda to Madanapalle in his vehicle, he had lost a cover containing two cheques with numbers 006336 and 006337 of State Bank of Mysore, Madanapalle signed by him along with a cell phone and other documents pertaining to his office and that on the same day he had lodged a complaint with the Manager of the said Bank and also with the police in that regard and had also obtained

acknowledgements. The said complaint filed by the petitioner was forwarded by the learned Magistrate to the police and the said matter is pending. Further, on 14.01.2012, the petitioner received the legal notice issued by the complainant. The cheque which the complainant says was dishonoured must be bearing either any one of the two numbers i.e., 006336 or 006337. In the notice, the number of the cheque which was dishonoured was not mentioned. Since the petitioner had already lodged a complaint with the police about the loss of the cheques which are signed by him, the present complaint against the petitioner is not maintainable. The notice was issued by the complainant on 28.12.2011. The same was received by the petitioner on 14.01.2012. The petitioner is having time up to 30.01.2012 to pay the cheque amount or comply with the demand in the notice. However, the complaint was lodged before the court on 18.01.2012 itself without waiting for the statutory period, which was available to the petitioner to pay the amount. Therefore, the complaint filed is premature and, hence, the same ought not to have been entertained and ought to have been rejected by the learned Magistrate. Hence the private complaint of the 2nd respondent filed against the petitioner is liable to be quashed.'

4. (c) At the time of hearing, the learned counsel for the petitioner reiterated the contentions pleaded in the petition.

5. Coming first to the contention of the petitioner that the dishonoured cheque was one of the two cheques which were signed and lost by the petitioner and that in that regard a police complaint was already lodged and that a private complaint was also filed etcetera, the said set of contentions cannot be a ground to quash the complaint. Whether the cheque was lost as contended by the petitioner or whether the cheque was given by the accused to the complainant in the circumstances stated in the complaint are matters of evidence and proof and therefore, on the contentions pleaded by the petitioner, the

proceedings in the STC cannot be quashed by exercising the powers under Section 482 of the CrPC.

6. Coming next to the contention that the complaint filed is premature, the specific case of the petitioner is this: 'After the dishonour of the cheque in the circumstances alleged in the complaint, the complainant had issued the statutory notice on 28.12.2011. The same was received by the petitioner/accused on 14.01.2012. Therefore, the petitioner is having time up to 30.01.2012 to pay the amount covered by the cheque. However, the complaint was filed on 18.01.2012 i.e., even before the time available to the petitioner/accused under law to pay the amount covered by the cheque had expired. Therefore, the complaint which is prematurely filed is liable to be quashed.'

6. (a) The learned counsel for both the sides have fairly conceded that this particular issue is *res integra*. It was brought to the notice of this court that in the decision in **Y.Pratap Singh v. Savitri Pandey**^[1] the following two questions – (i) '*Can cognisance of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 be taken on the basis of a complaint filed before the expiry of the period of 15 days stipulated in the notice required to be served upon the drawer of the cheque in terms of Section 138(c) of the Act aforementioned?* And (ii) '*If answer to question No.1 is in the negative, can the complainant be permitted to present the complaint again notwithstanding the fact that the period of one month stipulated under Section 142(b) for the filing of such a complaint has expired?* were referred to a three judge bench of the Hon'ble Supreme Court and a decision is yet to be made on the said two questions by a three judge bench of the Hon'ble Supreme Court. The learned counsel for both the sides had also submitted that as the judicial opinion on the question involved is split even among the High Courts in the country, the matter

was referred to a three judge bench of the Hon'ble Supreme Court.

6. (b) Therefore, when the matter is *res integra*, it is just and fair not to quash the proceedings at the threshold and leave the question open by giving liberty to the petitioner/accused to raise this contention at the appropriate time during the course of hearing of the arguments before the trial Court. Therefore, in the well considered view of this Court, the petition can be dismissed without expressing any opinion on the present issue involved in the matter by observing that the complaint cannot be quashed since the question involved in the matter is *res integra*.

9. In the result, the criminal petition is dismissed, however, making it clear that this court did not express any opinion on the following question – ‘*Can cognisance of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 be taken on the basis of a complaint filed before the expiry of the period of 15 days stipulated in the notice required to be served upon the drawer of the cheque in terms of Section 138(c) of the Act afore-mentioned?*’ and that therefore, it is open to the petitioner/accused to raise this contention before the trial court at the time of hearing of the final arguments in the case. It is needless to mention that in case such a contention comes to be raised, the trial court shall answer the said contention appropriately and adjudicate the case having regard to the legal position that may be obtaining at that relevant time.

Miscellaneous petitions pending, if any, in this petition shall stand closed.

M.SEETHARAMA MURTI, J

19th January, 2015
Vjl

[\[1\]](#) 2012 CrI.LJ 2336