

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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CRIMINAL PETITION No.5971 OF 2015

ORDER:

This Criminal Petition is filed by the petitioner/accused under Section 482 Cr.P.C seeking to set aside the order dated 20.03.2015 in Crl.M.P.No.12 of 2015 in Crl.Appeal No.171 of 2012 passed by the XII Additional District & Sessions Judge, Narasaraopet, Guntur District.

Heard the learned counsel for the petitioner and the learned Public Prosecutor (Andhra Pradesh) for the State.

The petitioner is accused in C.C.No.399 of 2009 on the file of I Additional Junior Civil Judge, Narasaraopet, which is an out come of a private complaint for the dishonour of cheque from the accrual of cause of action for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act') filed by the complainant. After trial from recording of evidence of complainant as PW.1 with no defence evidence of accused with reference to Exs.P1 to P7, the trial Court by judgment dated 07.05.2012 found the accused guilty and convicted him to undergo Simple Imprisonment for six months and to pay a fine of Rs.5,000/- in default suffer Simple Imprisonment for one month. Impugning the same, the petitioner preferred appeal in Crl.A.171 of 2012. During pendency of appeal, the petitioner filed Crl.MP.No.12 of 2015 under Section 391 Cr.P.C. to recall PW.1 for further cross examination stating that the cheque presented by the complainant contains two acknowledgements being made by bank authorities shows that the complainant approached the bank twice i.e., on 10.12.2008 and 01.06.2009 and the respondent never mentioned and

disclosed about the presentation of cheque earlier on 10.12.2008 and thereby further cross examination is necessary.

The complainant filed counter and opposed the petition.

After hearing, the appellate Court passed a detailed order by dismissing the petition saying that there is no necessity to recall PW.1 for further cross examination. Impugning the same, the present application is filed.

Heard at length and perused the material on record before admission and before notice to the 2nd respondent/*de facto* complainant and also perused the judgments in **Sudevanand, Santoshanand, Ranjan Dwivedi v. State through C.B.I.**^[1] and **Zahira Habibulla H. Sheikh v. State of Gujarat**^[2].

It is not even the case of the accused that the cheque was not presented within six months valid period. The law is fairly settled that any number of times presentation for every time even after giving statutory notice gives cause of action afresh under Section 142 of the Act to file the complaint within one month from accrual of cause of action vide **G.Sreeramachandrudu v. P.Srinivasa Rao**^[3] following the expression in **M.S.R.Leathers v. S.Palaniappan**^[4] (three Judges Bench). When such is the case whether there are two endorsements or three endorsements it makes no difference, as it is not the contention that the cheque is not presented within six months time from the date it bears that too a presumption under Section 118 (a) and (b) of the Act regarding date and amount of consideration paid. The law fairly settled from the other expression of the Apex Court in **Rangappa v. Sri Mohan of SLP (Crl.) No. 407 of 2006**, in page-10 (three Judges Bench)

with reference to Section 139 r/w explanation to Section 138 and Section 118 of the Act and it is for the accused even from his version in the reply notice of the cheque was stolen to prove the same. The endorsement of presentation or dates of inconsistency claimed even not shown of any bearing for that defence. It is apart from no explanation as to what prevented to agitate this aspect within his nose and eyes before the trial Court, for what is contemplated by the two expressions including from wording of Section 391 Cr.P.C. is showing of the necessity of the examination of a witness by recall or any additional evidence to permit. Thus in the factual matrix supra from what is discussed above there are no grounds showing any necessity to permit any additional evidence and as such there is nothing to interfere with the impugned order much less to admit or any notice to the 2nd respondent for further hearing.

Accordingly, this criminal petition is disposed of. The appellate Court shall dispose of the matter on its own merits, uninfluenced by the observations of this Court.

Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 08-07-2015
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[1] 1 (2012) CCR 215 (SC)

[2] AIR 2004 SC 3114(1)

[3] 2015(2) ALT(Cr.) 183 (AP)

[4] 2012(7) SCJ 423