

THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.5423 OF 2015

ORDER:

This Criminal Petition is filed by the petitioner/accused under Section 482 Cr.P.C. seeking to quash the proceedings in C.C.No.375 of 2015 on the file of the V Special Magistrate at Visakhapatnam registered for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881.

2. Heard the learned counsel for the quash petitioner and respondent No.1 – State represented by the Public Prosecutor (Andhra Pradesh). Notice was served on respondent No.2/*de facto* complainant and having received notice, it failed to attend the Court. Hence, treated as heard.

3. The petitioner - M/s.Hitech Rubber Products, represented by its Proprietor - Pilla Maheswara Rao is the accused in C.C.No.1842 of 2014 on the file of I Additional Chief Metropolitan Magistrate, Visakhapatnam. Later, the said C.C. was transferred to V Special Magistrate, Visakhapatnam for disposal and renumbered as C.C.No.375 of 2015. The said C.C. taken cognizance by the learned Magistrate is the outcome of a private complaint filed by respondent No.2 – Small Industries Development Bank of India, represented by its Assistant General Manager based on dishonour of four cheques. After dishonour, respondent No.2 gave notice to the petitioner demanding to pay the amounts due and having received the notice, the petitioner failed to pay the amounts due. Hence, the said private complaint was filed to punish the petitioner for dishonour of the cheques bearing Nos.368032 dated 10.8.2010 for Rs.1,30,000/-, 368033 dated 10.9.2010 for Rs.1,30,000/-, 055250 dated 29.9.2010 for Rs.55,000/- and 368033 dated 29.9.2010 for Rs.21,000/-.

4. The learned Magistrate has taken cognizance from the sworn statement of the *de facto* complainant and issued summons to the petitioner/accused. Impugning the same, the present quash petition is filed.

5. The contentions in the quash petition are that the trial Court erred in taking cognizance, as on the date of returning the complaint to file in proper Court for want of jurisdiction, the delay condonation application in CrI.M.P.No.39 of 2013 was not allowed and thereby, taking of cognizance without condonation of delay is bad. The private complaint vide D.D.R.No.11956 filed on 13.12.2010 was returned by the learned II Additional Chief Metropolitan Magistrate, Visakhapatnam on some objections and one of the objections is the delay in filing the complaint and there from, respondent No.2 filed petition in CrI.M.P.No.39 of 2013 under Section 142(B) of the Negotiable Instruments Act to condone the delay and while the same is pending, on 15.9.2014, the learned II Additional Chief Metropolitan Magistrate returned the complaint with a direction to the *de facto* complainant to file in a proper Court in view of the judgment dated 01.08.2014 of the Hon'ble Apex Court in Criminal Appeal No.2287 of 2009 in **Dashrath Roop Singh Rathod vs. State of Maharastra and another**. The *de facto* complainant resubmitted the complaint on 23.9.2014 before I Additional Chief Metropolitan Magistrate, Visakhapatnam on point of jurisdiction and the I Additional Chief Metropolitan Magistrate, without considering that the delay condonation application was pending, took cognizance of the case and numbered the Calendar Case as C.C.No.1842 of 2014 and the same was transferred to V Special Magistrate, Visakhapatnam now pending as C.C.No.375 of 2015.

6. The other contention is that the learned Magistrate erred in taking cognizance without even considering that respondent No.2 has not filed any authorization to prosecute the case against the petitioner. It is also the contention that the Proprietor of M/s.Hitech Rubber Products was not made a party to the complaint and the other contention is that no case was made out to attract the offence under Section 138 of the N.I.Act to take cognizance and thereby, sought for quashing the C.C. proceedings.

7. The private complaint filed by the *de facto* complainant, on its perusal, shows that the Bank sanctioned loan to a tune of Rs.97,70,000/- on 4.8.2008 to the accused proprietary concern and the loanee agreed to repay the same with interest in

instalments as per the agreement, and having executed the documents in favour of the bank for the loan, subsequently, became irregular in payment of instalments and for the instalments, it issued the four cheques mentioned supra and the said four cheques, when sent for collection on 4.10.2010 through IDBI Bank, Dabagardens Branch, Visakhapatnam for collection, the same were returned with an endorsement "Insufficient Funds" and the intimation was received on 6.10.2010. Respondent No.2 got issued notice on 27.10.2010 demanding to pay the amount of Rs.3,31,000/- covered by four cheques within 15 days after receipt of notice and accused, having received the notice on 28.10.2010, paid only Rs.21,000/- against cheque No.055249 and sought time of one week and later, did not pay and there from, the complaint was filed.

8. The complaint was returned saying that there was a delay of one day and the delay condonation application mentioned supra was filed saying that the complaint would have been filed on or before 12.12.2010, but on 11.12.2010 and 12.12.2010, the Assistant Manager went on inspection of the industries outside the headquarters and could not sign and present the complaint and for that reason, there was a delay of one day. As referred supra, the acknowledgment of notice served on the accused was 28.10.2010. From the date of receipt of notice, 15 days is the period to pay the amount. Date of receipt of notice to be excluded as per the General Clauses Act, 1897 and Section 12 of the Indian Limitation Act, 1963. If it is the case, 15 days is to be computed from 29.10.2010 when from the cause of action to file the complaint under Section 142 of the Negotiable Instruments Act is one month, to say from 13.11.2010 to 13.12.2010, as per the General Clauses Act and the Indian Limitation Act. It is not clear from the material placed by the quash petitioner as to on which date, the complaint was filed. Even from the delay condonation application filed for one day, it is not clear, but for to say the complaint could be filed on or before 12.12.2010. In fact, under the General Clauses Act and the Limitation Act, it can be filed on 13.12.2010 as it appears.

9. Having regard to the above, for insufficiency of material particulars to quash, it is not a fit case to quash merely because an application for condonation of delay is pending. However, such a defence is left open to the petitioner to raise before the trial Court during trial.

10. Accordingly, the Criminal Petition is disposed of.

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

Dr. JUSTICE B.SIVA SANKARA RAO

Date:25.11.2015

AMD

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