THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
Crl.P.No.2457 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioner seeks to quash the proceedings in C.C.No.366 of 2012 on the file of Additional Judicial First Class Magistrate, Narsapur.

2a) In this case, the petitioner is facing charge under Section 138 of Negotiable Instruments Act, 1881 (for short "NI Act"). The first respondent filed complaint in C.C.No.366 of 2012 against the petitioner/accused on the allegations that he is carrying on business in electronic home appliances in Narsapur, West Godavari District and accused also carrying on business in electronic home appliances in retail under the name and style M/s.Kalpana Electronics, Peddapuram, East Godavari District and she opened katha with him in the year 2010 and she used to purchase the goods on credit and in that connection she indebted Rs.43,500/- by the end of November 2011 and on the demand of complainant, the accused issued two cheques Rs.20,000/- each dated 05.02.2012 and 12.02.2012 drawn on ICICI Bank, Peddapuram towards part satisfaction of the katha debt.

b) The complainant further alleged that he presented the first cheque on 06.02.2012 with his bank i.e. Andhra Bank, Main Branch, Narsapur and second cheque on 13.02.2012 in the same bank for collection, but those cheques were dishonoured with the endorsement "*funds insufficient*" as intimated by the accused bank under two cheque return memos dated 08.12.2012 and 15.02.2012 through its online ICICI bank branch, Palakol. The said fact was in turn intimated through online ICICI bank branch, Palakol to complainant bank—Andhra Bank, Main Branch, Narsapur. Thereafter, the complainant got issued legal notice dated 16.04.2012 calling upon the accused to arrange the payment of amount covered by bounced cheques but the accused evaded to pay the amount. Hence the complaint.

3) Learned counsel for petitioner/accused argued mainly on the ground that notice dated 16.04.2012 issued by the complainant in terms of Section 138(b) of NI Act was beyond the period of 30 days even as per the complaint averments and therefore, continuation of proceedings in C.C.No.366 of 2012 amounts to abuse of process of the Court and hence CC is liable to be quashed. Learned counsel relied upon the decision reported in ***Sivakumar v. Natarajan***[1].

4) Opposing the petition, learned counsel for respondent/complainant submitted that first cheque bearing No.5674 dated 05.12.2012 for Rs.20,000/- drawn by the accused on her bank i.e. ICICI Bank, Peddapuram Branch, was returned through its branch i.e. ICICI Bank, Palakol on 10.02.2012 and whereas the second cheque bearing No.5675 dated 12.02.2012 for Rs.20,000/- drawn by the accused on ICICI Bank, Peddapuram Branch was returned

by ICICI Bank, Palakol on 17.02.2012. He further submitted that Palakol branch of ICICI Bank intimated about the bouncing of two cheques to the complainant bank i.e. Andhra Bank, Main Branch, Narsapur, West Godavari District some time later and in turn the Andhra Bank, Narsapur intimated the said fact vide its letter dated 19.03.2012 and therefore, the complainant came to know about the bouncing of two cheques only on 19.03.2012. The complainant promptly issued demand notice on 16.04.2012 as contemplated under Section 138 proviso (b) of NI Act within 30 days from 19.03.2012 and therefore, demand notice was well within the period of 30 days. Learned counsel admitted that the factum of Andhra Bank, Narsapur sending intimation to the complainant on 19.03.2021, was not mentioned in the complaint petition by mistake. He produced the copy of intimation letter dated 19.03.2012 purported to be addressed by Andhra Bank, Narsapur to complainant as material on his behalf and prayed to dismiss the petition.

5) In the light of above rival submissions, the point for determination is:

"Whether there are merits in this petition to allow?"

6) A perusal of copy of the letter addressed by Andhra Bank, Narsapur to the complainant shows that the said bank addressed the letter on 19.03.2012 stating that two cheques given by the complainant to them for collection were returned by the banker viz. ICICI Bank, Palakol. So, the factum of

bouncing of the cheques was made known to the complainant by his banker only on 19.03.2012. In this context, Section 138 proviso (b) reads thus:

> ***138. Dishonour of cheque for insufficiency, etc., of funds in the accounts.-*** *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 provisions of this Act, be punished with imprisonment for a term which may be extended to two years, 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*
>
> *(a) xx xx xx*
>
> *(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* ***thirty days*** *of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and*
>
> *(c) xx xx xx*

So, as per the above proviso, a demand notice has to be issued by the payee within 30 days of receipt of information by him from the bank regarding return of the cheque as unpaid. As per the decision in ***Shivakumar***'s case (1 supra) the date of intimation of the dishonour of cheque has to be included for the purpose of calculating limitation period of 30 days. So going by the aforesaid decision, the period of 30 days ends by 17.04.2012. As per the complaint averments notice was issued on 16.04.2012 i.e. well within the period of 30 days. So, going by the copy of letter dated 19.03.2012, it can be said that demand notice was within the period of 30 days. Hence I find no merits in this petition to allow. However, it is made clear that the burden is on the complainant to establish the authencity of copy of the letter dated 19.03.2012 during trial.

7) With this observation, this Criminal Petition is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Dt: 11.04.2016

Murthy

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[1] 2009 (2) ALD (Crl.) 572 (SC)