

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.9844 of 2010

ORDER:

1 This petition is filed under Section 482 Cr.P.C to quash the proceedings against the petitioner/accused in STC No.133 of 2010 on the file of the Court of the Additional Judicial Magistrate of First Class, Kadapa. In spite of service of notice, the second respondent did not choose to appear and contest the matter. Hence this Court is inclined to dispose of the matter on merits and in the absence of 2nd respondent.

2 The facts leading to filing of the present Criminal Petition are as follows:

3 The petitioner borrowed several amounts from the second respondent on different dates for his family necessities and executed promissory notes on different dates. On 27.08.2009 the petitioner issued a cheque bearing No.014143 for an amount of Rs.10.00 lakhs in favour of the second respondent. The second respondent presented the said cheque in HDFC Bank, Kadapa branch for collection and the same was dishonoured on the ground 'insufficient funds' The second respondent received the intimation on 01.09.2009. Thereupon, the second respondent got issued a notice to the petitioner on 14.09.2009, which was returned with an endorsement "addressee absent for seven days" on 30.09.2009. The second respondent got issued another notice on 03.10.2009 to the petitioner demanding the petitioner to pay the amount within 15 days form the date of receipt of the notice, but the petitioner did not pay the amount. Having no other alternative, the second respondent filed complaint before the trial Court on 05.11.2009.

4 The contention of the learned counsel for the petitioner is that the second respondent filed the complaint after expiry of statutory period of limitation. He further submitted that under the provisions of the Negotiable Instruments Act, the complaint is not maintainable under law basing on the issuance of the second notice.

5 _____ It is an admitted fact that for the first time the second respondent got issued notice to the petitioner on 14.09.2009, which was returned on 30.09.2009. The second respondent got issued second notice on 03.10.2009 demanding the petitioner to pay the amount covered under the cheque within 15 days failing which legal consequences would follow. It is needless to say that the cause of action for filing of the complaint under Section 138 of N.I. Act commences after the expiry of 15 days from the date of receipt of notice by the accused. It is an admitted fact that the second respondent did not file the complaint basing on the cause of action accrued in his favour in pursuance of the legal notice dated 14.09.2009. Admittedly, the complaint was filed on 05.11.2009 basing on the cause of action accrued in pursuance of the second notice dated 03.10.2009.

6 _____ The crucial question that falls for consideration is whether a complaint under Section 138 of N.I. Act is maintainable basing on the second legal notice, dehors the first notice. The learned counsel for the petitioner submitted that a complaint under Section 138 of N. I. Act cannot be filed basing on the cause of action accrued in pursuance of the second legal notice. To substantiate the same, the learned counsel for the petitioner has drawn the attention of this Court to the ratio laid down in ***Sathu Janardhan Vs. P. Naga Vara Prasad***^[1] wherein, this Court, while placing reliance on the principle enunciated in ***Sadanandan Bhadran Vs. Madhavan Sunil Kumra***^[2], ***Prem Chand Vijay Kumar V. Yashpal Singh***^[3] and ***Sunrise Oleo Chemicals Limited V. K.M. Enterprises***^[4] held as under:

6. _____ Having regard to the above legal position, it is evident that private complaint filed by the complainant in the lower Court on 2.2.2006 is barred by limitation when reckoned with date of receipt of first notice by the accused on his failure to make payment of amount covered by the cheque within 15 days thereof. The complainant, having lost opportunity to file complaint on the basis of the said cause of action, is barred from basing his complaint on the basis of subsequent dishonour of the cheque after exchange of first notice.

The facts of the case on hand are almost identical to the facts of the case cited supra.

7 Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that continuation of criminal proceedings against the petitioner would certainly amount to abuse of process of law and miscarriage of justice. Viewed from any angle, either factual or legal, it is a fit case to quash the impugned proceedings.

8 In the result, the Criminal Petition is allowed, quashing the proceedings against the petitioner in STC No.133 of 2010 on the file of the Court of the Additional Judicial Magistrate of First Class, Kadapa. As a sequel, miscellaneous petitions pending in this Criminal Petition, if any, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 17.03.2016

Kvsn

[\[1\]](#) 2010 (1) ALT (CrI.) 272 (A.P.)

[\[2\]](#) 1998 (2) ALD (CrI.) 529 (SC)

[\[3\]](#) 2005 (2) ALT (CrI.) 286 (SC)

[\[4\]](#) 2003 (3) ALT 106