

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY
CRIMINAL PETITION No.9772 OF 2010

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ORDER:

This petition is filed under Section 482 Cr.P.C to quash the proceedings against the petitioner/accused in C.C.No.357 of 2009 on the file of the Court of XX Additional Chief Metropolitan Magistrate, Hyderabad.

2. The contention of the learned counsel for the petitioner is that the complaint is barred by limitation.

3. Learned counsel for the second respondent submitted that the complaint is filed within a period of limitation. He further submitted that there are no grounds to quash the proceedings against the petitioner.

4. The facts leading to filing of the present petition are briefly as follows:

The petitioner being the Proprietor of 7H-Auto Spa had purchased "Speed Governor" from the second respondent worth of Rs.2,46,875/- vide invoice No.HYD/CVP/0019, dated 07.02.2009. The petitioner issued a cheque bearing No.018055 for Rs.1,00,000/- and another cheque bearing No.018056, dated 06.02.2009 for Rs.1,46,875/- drawn on State Bank of India, Korlagunta (Tirupati) in favour of the second respondent. The second respondent presented the said cheques in I.D.B.I. Bank Limited, Basheerbagh Branch, Hyderabad on 17.02.2009 for encashment. The said cheques were dishonoured with an endorsement 'funds insufficient'. Thereafter, the second respondent has informed the petitioner about the dishonour of the cheques. As requested by the petitioner, the second respondent represented the cheques in the bank on 28.02.2009 for encashment. The said cheques were returned on 15.03.2009 with an endorsement 'funds insufficient'. At the request of the petitioner, the second respondent once again submitted the cheques for encashment in

I.D.B.I. Bank, Basheerbagh Branch, Hyderabad on 08.07.2009 and the said cheques were returned on 13.07.2009 with an endorsement 'exceeds arrangement'. On 31.07.2009, the second respondent got issued a legal notice directing the petitioner to pay the amount within 15 days from the date of receipt of the notice, failing which, he will be constrained to approach the Court. The petitioner received the notice in the first week of September, 2009 and failed to repay the amount. Having no other alternative, the petitioner filed the complaint on 25.09.2009. The learned Magistrate, after satisfying himself with the material placed before him, has taken cognizance of offences against the petitioner under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act') and issued summons.

5. The only question urged by the petitioner is that whether the complaint is filed within the period of limitation or not.

6. A perusal of the record reveals that the legal notice sent by the second respondent was served on the petitioner on 01.09.2009 whereas the complaint is filed on 25.09.2009. In the complaint in cause of action para, it is mentioned that the petitioner received the notice on 01.09.2009. This fact is not being disputed by the petitioner. The drawee has to wait for a period of 15 days from the date of receipt of notice by the drawer. The cause of action to file complaint starts after expiry of 15 days from the date of receipt of notice by the drawer. In view of Section 142(b) of the N.I. Act, the complaint has to be filed within a period of one month of the date on which the cause of action arises. It is an admitted fact that the complaint is filed on 25.09.2009 i.e., within 25 days from the date of service of notice on the petitioner. While deciding the matters of this nature, the Court has to take into consideration the material available on record. The material placed before this Court *prima facie* reveals that the complaint is filed within the period of limitation. Therefore, I am unable to accept the contention of the learned counsel for the petitioner that the respondent filed the

complaint after expiry of period of limitation.

7. Having regard to the facts and circumstances of the case,
I am of the considered view that there are no grounds much less valid
grounds to quash the proceedings against the petitioner.

8. Hence, the Criminal Petition is dismissed.

9. Consequently, Miscellaneous Petitions, pending in this Criminal
Petition, if any, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 26.04.2016

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