

THE HON'BLE SRI JUSTICE P.KESHA VA RAO

CRIMINAL PETITION No.2968 OF 2011

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor.

Pursuant to the orders dated 3.11.2017, the petitioner has taken out a personal notice to the 2nd respondent and the same is served on him on 8.11.2017. In spite of service of the notice, the 2nd respondent has not chosen to appear before this Court either in person or by engaging any counsel. The said proof of service is produced in the Court vide USR.No.7080 of 2017 dated 14.11.2017 and the same is made part of the record.

The petitioner who is the sole accused, filed the present Criminal Petition, seeking to quash the proceedings initiated against him in C.C.No.594 of 2010 for the offences under sections 138 and 142 of Negotiable Instruments Act and under section 200 of Cr.P.C. on the file of Judicial First Class Magistrate at Kodad, Nalgonda district.

The facts of the case are that in the course of business, the 2nd respondent herein had supplied rice to the accused i.e., the petitioner and in view of the same, the petitioner has issued cheques bearing Nos.376928 and 376929 for Rs.4,00,000/- each, drawn on ING Vysya Bank, Miryalaguda branch towards the

legally enforceable debt. When the 2nd respondent presented the said cheques for collection with his Banker i.e., Andhra Bank, Kodad branch on 23.8.2010, the same were dishonoured on 27.8.2010 with an endorsement, "Funds insufficient". The said fact was informed to the 2nd respondent vide memo on 14.9.2010. In pursuance of the said dishonour of the cheques, the 2nd respondent got issued a legal notice on 20.9.2010 calling upon the petitioner to pay the said amounts within 15 days from the date of receipt of the notice. However, the said notices were returned unserved, and the said amounts covered under the above said cheques were not paid. Therefore, the 2nd respondent was constrained to file a complaint for the offences under sections 138 and 142 of Negotiable Instruments Act and under section 200 of Cr.P.C. The complaint was registered as C.C.No.584 of 2010. Aggrieved by the said proceedings, the present criminal petition is filed.

Learned counsel for the petitioner would contend that after filing of the complaint, on the advice of the mediators and friends, the 2nd respondent and the petitioner, have settled the matter amicably and entered into a memorandum of understanding dated 5.1.2011. Under the said memorandum of understanding, the petitioner has agreed to deliver 34 tonnes of rice to the 2nd respondent herein and after receipt of the said rice, the 2nd respondent shall pass a valid receipt to the petitioner herein. In

pursuance of the said understanding, the 2nd respondent shall file a petition for withdrawal of the case in CC.No.584 of 2010 under section 257 Cr.P.C. before the Court below and withdraw the same on the date of adjournment itself i.e., 8.2.2011, without fail. Even if, it is not withdrawn on the date of hearing i.e., on 8.2.2011, as per the memorandum of understanding, the above said case is deemed to be withdrawn by the 2nd respondent herein. In pursuance to the said memorandum of understanding, the petitioner had already supplied 34 tonnes of rice to the 2nd respondent herein towards full and final settlement of CC.No.584 of 2010 on the file of Judicial First Class Magistrate, Kodad, Nalgonda district. Pursuant to receipt of the said 34 tonnes of rice from the petitioner which is towards full and final settlement, the 2nd respondent issued a receipt dated 5.1.2011 to the effect that he received 34 tonnes of rice from the petitioner. The said receipt as well as the memorandum of understanding are placed on record and made part of the record in the present criminal petition. In spite of receipt of 34 tonnes of rice, the 2nd respondent failed to withdraw CC.No.584 of 2010. Therefore, the petitioner was constrained to file the present criminal petition.

A perusal of the contents of the complaint as well as the memorandum of understanding would clearly establish that CC.No.584 of 2010 was filed for not paying the amounts towards

the legally enforceable debt under which the subject cheques were issued. After entering into the memorandum of understanding, on the advise of mediators and friends, the matter has been settled between the parties and the petitioner herein has supplied 34 tonnes of rice to the 2nd respondent towards full and final settlement of legally enforceable debt which is the subject matter of CC.No.584 of 2010.

Though notice is served on the 2nd respondent, he has not chosen to appear before the Court to rebut the above said contention.

However keeping in view the submissions made by the learned counsel for the petitioner as well as looking into the record, this Court feels that the petitioner has already discharged the legally enforceable debt of the 2nd respondent, which is the subject matter of CC.No.584 of 2010, by supplying 34 tonnes of rice. Therefore, further continuation of the proceedings against the petitioner would amount to abuse of process of the Court, and hence, proceedings initiated against the petitioner in CC.No.584 of 2010 are liable to be quashed.

Accordingly, the criminal petition is allowed and the proceedings initiated against the petitioner in CC.No.584 of 2010 for the offences under sections 138 and 142 of Negotiable

Instruments Act on the file of the Judicial First Class Magistrate,
Kodad, Nalgonda district are hereby quashed.

Miscellaneous Petitions, if any, filed in this Criminal
Petition shall stand closed.

JUSTICE P.KESHA VA RAO

Dated: 15.12.2017

KPM

