

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.7888 of 2017

ORDER

This petition under Section 482 of Cr.P.C., is filed to quash the proceedings in C.C.No.1155 of 2016 pending on the file of III Metropolitan Magistrate for Municipal Cases (Mobile), Vijayawada, against the petitioner/accused, on the sole ground that the Court did not take cognizance for a period of more than two years after filing the calendar case for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act').

2. The second respondent filed a private complaint against the petitioner alleging that the petitioner purchased tyres on credit basis from its firm agreeing to pay the sale consideration within a month from the date of purchase with interest at 24% per annum including late payment charges and if further delay is caused, he agreed to pay interest at 36% per annum on the original value of the sale consideration of tyres. Accordingly, the complainant supplied tyres on credit basis. In that process, the petitioner purchased tyres on credit basis on 18.02.2013 for Rs.12,57,600/-, on 31.12.2013 for Rs.3,50,000/- and on 31.12.2013 for Rs.3,50,000/- from the complainant. On demand made by the complainant, the petitioner paid an amount of Rs.2,57,600/- on 04.03.2013 through funds transfer and again on 28.03.2013, he paid an amount of Rs.3,50,000/- as part payment. Again, the petitioner approached the complainant and pleaded to supply tyres on credit basis without any payment of the amount already due and acceding to the request, it

supplied the tyres on 31.12.2013. The petitioner issued three cheques on 01.01.2014, 02.01.2014 and 03.01.2014 for Rs.5,00,000/-each drawn on HDFC Bank, S.N.P. Area Main Road Branch, Jamshedpur, Jharkhand. On presentation of those cheques for collection by the complainant, the said cheques were dishonoured with an endorsement 'funds insufficient' vide cheque return memos, which were served on the complainant on 08.01.2014. Thereupon, it got issued a notice on 22.01.2014 calling upon the petitioner to pay the amount covered by the dishonoured cheques and on receipt of the same on 23.01.2014, the petitioner got issued a reply on 24.01.2014 with false and frivolous facts. Hence, the petitioner allegedly committed the offence punishable under Section 138 of the Act.

3. The main contention of petitioner before this Court is that in view of the judgment of the Apex Court in **Dashrat Rupsingh Rathod V. State of Maharashtra and another**¹, the jurisdiction is vested with the Court within whose limits the payee Bank is situated, but the complaint was filed at Vijayawada without any jurisdiction and thereupon, in view of the judgment of the Apex Court, the complaint was returned for presentation before the proper Court and again represented on different occasions, but the Court did not take cognizance of the offence punishable under Section 138 of the Act against the petitioner. However, the cognizance was taken at last on 08.1.2016 though the complaint was filed as early as in the year 2014. Therefore, the proceedings are liable to be quashed and the

¹ (2014) 9 SCC 129

petitioner prayed to quash the proceedings against him exercising power under Section 482 of Cr.P.C.

4. This Court, by order dated 19.09.2017, called for report from the III Metropolitan Magistrate, Vijayawada, as to what had happened before the Court when the calendar case was returned and accordingly, report dated 08.11.2017 is received by this Court.

5. During hearing, learned counsel for petitioner while reiterating the contentions mainly contended that even the report of the Metropolitan Magistrate is silent as to what had happened during the interregnum period i.e., from the date of filing the complaint till taking cognizance, despite return of the complaint by the Court for presentation before the competent Court. Taking cognizance after passing Ordinance and amendment to Section 145 of the Act would not have any effect on the complaint filed earlier to the cognizance taken and therefore, the proceedings are liable to be quashed by exercising power under Section 482 of Cr.P.C. He also placed reliance on the judgment of the apex Court in **Bridgestone India Private Limited v. Inderpal Singh**² in support of his contention.

6. Whereas the counsel for the second respondent contended that such question has to be considered at the end of trial and the issue of limitation is raised for the first time before this Court and the same cannot be entertained. He placed reliance on the judgment of the Apex Court in **Pawan Kumar Ralli V. Maninder Singh Narula**³

² (2016) 2 SCC 75

³ (2014) 15 SCC 245

and based on the principle laid down in the said judgment, on the ground of limitation, the Court cannot quash the proceedings.

7. The factum of filing the complaint in the year 2014 before the III Metropolitan Magistrate, Vijayawada, is not in dispute. The report submitted by the III Metropolitan Magistrate, Vijayawada, would disclose that the private complaint was filed on 06.03.2014 before the Court of I Additional Chief Metropolitan Magistrate, Vijayawada, in CFR No.2511/2014 and it was posted for hearing on 07.03.2014 by the said Magistrate. The said complaint was returned to file before proper Court. But the second respondent re-submitted the same into the Court. Again, the complaint was returned on 13.05.2014 on the ground that the Court has no territorial jurisdiction to entertain the complaint, but again it was resubmitted to the same Court on 02.06.2014 in CFR No.4115 of 2014 and at that time, the Superintendent of the Court put initials and thereafter, the complaint was again returned to file in proper Court and again resubmitted before the IV Additional Chief Metropolitan Magistrate's Court, Vijayawada. Thus, from the date of filing the complaint on 06.03.2014, the complaint was returned and resubmitted and again returned and resubmitted, but the date of resubmission is not disclosed in the remarks sent by the Magistrate. But, as seen from the docket, the cognizance of the offence was taken on 08.01.2016. The only ground raised before this Court is that the report of the Magistrate or the docket did not disclose what had happened to the returned complaint after 02.06.2014 and when it was represented before the Magistrate is not known. In any view of the matter, as per

the docket produced before this Court, the complaint was resubmitted on 02.11.2015 and it was adjourned to 04.12.2015 for recording the sworn statement of the complainant or affidavits and on 04.12.2015, the sworn statement of the complaint was recorded and took cognizance of the offence on 08.01.2016 for the offence punishable under Section 138 of the Act. Therefore, from the material available on record, at this stage, it is clear that the Magistrate took cognizance on 08.01.2016 though it was returned and represented on several times after amendment of Section 142(a) of the Act.

8. Learned counsel for petitioner mainly relied upon the judgment of the Apex Court in **Bridgestone's** case, referred supra, wherein the Apex Court held as under:

“Section 142(2) of Cr.P.C., vests jurisdiction for initiating proceedings under Section 138 of the Act, *inter alia*, in the territorial jurisdiction of Court, where cheque is delivered for collection through an account or branch of bank where payee or holder in due course maintains an account). Again insofar as offence under Section 138 of the Act is concerned, on the issue of jurisdiction, provisions of Cr.P.C., would have to give way to provisions of instant enactment on account of non obstante clause in Section 142-A(1) of Cr.P.C. Likewise, based on section 142-A(1), any judgment, decree, order or direction issued by a Court, would have no effect insofar as territorial jurisdiction for initiating proceedings under Section 138 is concerned. Hence, the judgment rendered by the Supreme Court in Dashrath Rupsingh Rathod (2014) 9 SCC 129 would not stand in way of appellant insofar as territorial jurisdiction for initiating proceedings emerging from dishonour of cheque in present case arises.

9. Even if the principle laid down in the above judgment is applied, the amendment would have prospective effect and retrospective effect according to the contention of the learned

counsel for the petitioner. But at the same time, in other judgment reported in **Pawan Kumar Ralli's** case, referred supra, held that on the issue of limitation, which is raised for the first time, this Court cannot quash the proceedings since the dates of return and representation finally and other details are not before this Court to decide whether taking cognizance of the offence punishable under Section 138 of the Act is within time or the Court below is having jurisdiction or not on the date of filing the petition. Therefore, I find that it is appropriate to permit the petitioner to file a proper petition before the Magistrate to decide the jurisdiction and limitation, and on filing such application, the Magistrate is directed to decide whether the complaint was filed within limitation and the Court below is having jurisdiction since the entire material is before the Magistrate. Therefore, it is open to the petitioner to file appropriate application questioning the territorial jurisdiction and limitation before the Magistrate, and on filing such application, the Magistrate is directed to decide the application in accordance with law.

10. With the above direction, the Criminal Petition is disposed of.

11. Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

20th December, 2017

sj