

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.348 OF 2017

ORDER:

This Criminal Petition, under Section 482 of Cr.P.C., is filed by the petitioner/accused seeking to quash the proceedings in C.C. No.141 of 2017, pending on the file of the IV Special Magistrate Court at Visakhapatnam (for short, 'the lower Court').

Heard Sri R.Siva Sai Swaroop, learned counsel for the petitioner/accused, learned Public Prosecutor appearing for the 1st respondent-State, and Sri K.Sai Rama Murthy, learned counsel for the 2nd respondent-*de-facto* complainant, and perused the record.

Learned counsel for the petitioner would submit that the 2nd respondent filed a complaint against the petitioner, for offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short, 'the Act'), in connection with dishonour of a cheque bearing No.910212 dated 05.01.2016, said to have issued by the petitioner, for Rs.2,00,000/-. The main submission of learned counsel for the petitioner is that in the statutory notice got issued by the 2nd respondent, there is no mention of demand of cheque amount and the same cannot be deemed to be a statutory notice, as per the proviso (b) of Section 138 of the Act. Therefore, the complaint filed by the 2nd respondent against the petitioner is not maintainable and, in support of his submission, relied on a decision of High Court of Gujarat at Ahmedabad in ***Yakub Musabhai Shafi Vs. Lalit H.Gandhi and another***¹.

Per contra, learned counsel for the 2nd respondent would contend that the notice is required to be read as a whole and the notice very much

¹ 2012 (2) GLR 1146

contained a demand to pay the cheque amount within 15 days and the notice issued is in accordance with law and as per the provisions of the Act. There are no circumstances to quash the proceedings in C.C. No.141 of 2017 and ultimately prayed to dismiss the petition.

In view of above rival contentions, the short point falls for determination is whether the proceedings, pending against the petitioner, in C.C. No.141 of 2017 are liable to be quashed for want of required statutory notice?

POINT: Under the provisions of the Act, a statutory notice is required to be given to the drawer (petitioner) giving 15 days time to pay the dishonoured cheque amount to the payee (2nd respondent), in default of such payment, the payee is entitled to lodge a complaint against the drawer for the offence under Section 138 of the Act.

In the instant case, statutory notice issued by the 2nd respondent dated 18.01.2016 reveals that the petitioner, to meet his family expenses and to clear sundry debts, borrowed an amount of Rs.4,00,000/- from him by executing a demand promissory note to repay the said amount with interest at the rate of 24% p.a. There is also a mention that the petitioner subsequently issued a cheque bearing No.910121, dated 05.01.2016 for Rs.2,00,000/- towards part satisfaction of the due amount and when the cheque was presented by the 2nd respondent, it was returned with an endorsement '*funds insufficient*' on 07.01.2016. The last paragraph of the notice reads as follows:

“Please take notice that you are hereby called upon by my client, immediately you shall pay thereon to my client within 15 days from the date of receipt of the said notice, failing which my client will be constrained to take appropriate legal action against you in a

competent court of law. You also held liable to pay an amount of Rs.1,000/- towards issuing this notice.”

From a perusal of the notice, it is clear that either in the last paragraph of the notice or anywhere there is no specific demand by the 2nd respondent to pay the cheque amount of Rs.2,00,000/- to him, though there is a mention that in case of default, the 2nd respondent will take appropriate legal action against the petitioner.

In ***Yakub Musabhai*** (1 supra), the High Court of Gujarat at Ahmedabad held that the notice is not as per proviso (b) of Section 138 of the Act, as there is no specific mention of demand of cheque amount, relied on a decision of the Apex Court in ***Sumar Sethi Vs. Ajay K.Churiwal and another***² wherein it was held that if no such demand is made the notice could fall short of its legal requirement and allowed the Criminal Petition quashing the impugned proceedings therein.

As the facts of the case in ***Yakub Musabhai*** (1 supra) are akin to the case on hand, as there is no specific demand of cheque amount in the instant case, the impugned proceedings pending against the petitioner are liable to be quashed.

In the result the Criminal Petition is allowed and the proceedings in C.C. No.141 of 2017 pending on the file of IV Special Magistrate Court at Visakhapatnam are quashed.

As a sequel, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 03-11-2017.
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² AIR 2000 (SC) 828

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64



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