

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.6165 of 2017

ORDER :

The petitioner is the accused of C.C.No.77 of 2016, which is out come of private complaint, for the offence under Section 138 of Negotiable Instruments Act, 1881 (for short, 'N.I.Act'), filed by the 2nd respondent and the learned Judicial Magistrate of First Class, Chintalapudi of West Godavari District, has taken cognizance for the offence under Section 138 read with 142 of N.I.Act and issued summons and the accused appeared and contesting the matter. Now the petitioner seeking to quash the said cognizance saying that there is no legally enforceable debt and it is misuse of the cheque available even perusal of the cheque writings, it subsequently filled when compared to the signature on the pronote debt with anti date, discloses the same. This is in fact a factual aspect to be adjudicated. Crucially, the main contention of the learned counsel for the petitioner is that the cheque allegedly dated 25.03.2013, presented for encashment and the cheque return memo shows dated 28.06.2013 and the legal notice issued was dated 04.08.2013. These facts are also reflecting from the complaint and the affidavit filed in support of the complaint at pre-cognizance stage by the complainant and that is the contention, there from, the statutory notice required to be given within one month after dishonour of the cheque, whereas the notice was not given within one month but beyond and thereby, there is no valid statutory notice for accrual of cause of action for the alleged non payment after service within the statutory time to maintain the complaint.

2. The crucial aspect is when the cheque return memo received by the complainant. The cheque return memo shows dated 28.06.2013, if it is the date, on which date the cheque return memo received and legal notice issued beyond 30 days is not within the statutory requirement contemplated by Section 138 of N.I.Act. Suffice to say, there is no valid notice for accrual of any cause of action to maintain the complaint.

3. Having regard to the above and this is a crucial aspect and the Apex Court in **Bhushan Kumar v. State (NCT of Delhi)**¹ and the Delhi High Court in **Arvind Kejriwal and others v. Amit Sibal and another**², referring to it held that the learned Magistrate can consider this at the stage of examination Section 251 Cr.P.C., if at all, any stage application filed, the trial Court is directed by virtue of this order to entertain the application of the petitioner by raising all the contentions to adjudicate the same with reference to above observations. All defences of the petitioner are left open.

4. With the above observation, the criminal petition is disposed of.

5. Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

6th September 2017.

Note:

Registry to return the original papers.

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¹ (2012) 5 SCC 424

² (2014) SCC Online Delhi 212