THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.9525 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioner/accused seeks to quash the proceedings in C.C.No.96 of 2013 (Old C.C.No.252 of 2012) on the file of XI Special Magistrate, Erramanzil, Hyderabad whereunder the petitioner was charged for the offence under Section 138 of Negotiable Instruments Act, 1881 (for short 'NI Act").

2a) Brief facts of the case are that the 2nd respondent/complainant is a businessman and he knew the accused since long time and out of their acquaintance, on 24.11.2008 the accused took hand loan of Rs.1,50,000/- from the complainant with a promise to repay the same within three years and issued a cheque bearing No.843660 with post date as 24.11.2011 drawn on Bank of Baroda, Khairatabad Branch, Hyderabad for collateral purpose. After three years when the complainant asked for repayment of loan, accused postponed on one pretext or other. At last, when the complainant demanded for repayment of loan amount, accused asked the complainant to present the post-dated cheque which was given by him earlier. Accordingly, when the complainant presented the cheque in ICICI Bank, Himayatnagar Branch, it was dishonoured with the endorsement "*funds insufficient*" and intimated vide cheque return memo dated 12.12.2012. Then, the complainant issued legal notice dated 10.01.2012 calling upon the accused to pay the cheque amount within 15 days. The accused having received the notice did not choose to pay the cheque amount.

b) With the above averments, initially the complaint was made before IX Additional Chief Metropolitan Magistrate, Hyderabad which was taken cognizance and numbered as C.C.No.252 of 2012 and later, on the point of jurisdiction, it was transferred to XI Special Magistrate, Erramanzil, Hyderabad and numbered as C.C.No.96 of 2013.

Hence, the present petition for quashment.

3) Heard arguments of Sri T.Sudhakar Reddy, learned counsel for petitioner and Sri B.Sheshu Kumar, learned counsel for R2/complainant and learned Additional Public Prosecutor (TS) for R1.

4a) The petitioner's argument is two fold. Firstly, the petitioner/accused obtained hand loan of Rs.1,50,000/- from the 2nd respondent/complainant on 24.11.2008 and executed a receipt to that effect in favour of 2nd respondent on 24.11.2008. The petitioner issued post-dated cheque bearing No.843660, dated 24.11.2017 in respect of said hand loan as collateral purpose. Subsequently the petitioner paid an amount of Rs.1,30,000/- on 04.06.2011 and the balance amount due was Rs.20,000/- which was agreed to be paid in due course. The 2nd respondent executed a receipt-cum-acknowledgement in favour of petitioner and mentioned about his receiving of Rs.1,30,000/-. Therefore, the 2nd respondent is not entitled to present the post-dated cheque with the bank since no legally enforceable debt as envisaged under Section 138 of NI Act was in existence. Therefore, the petitioner addressed a letter to his banker i.e.

Bank of Baroda, Khairthabad Branch on 23.11.2011 requesting the Branch Manager to stop payment in respect of cheque bearing No.843660, dated 24.11.2011, if presented by 2nd respondent. In spite of the same, the 2nd respondent mischievously presented the cheque on 12.12.2011 with his banker i.e. ICICI Bank, Himayatnagar Branch and got it returned on 12.12.2011 itself with a cheque return memo issued by the said bank. It is thus argued that since no legally enforceable debt was due in respect the cheque bearing No.843660 for Rs.1,50,000/-, presentation of the cheque and filing of criminal proceedings on the ground of its bouncing back is not legally permissible.

b) The second ground for quashment is, of course on the point of limitation. Learned counsel vehemently argued that the cheque was bounced back on 12.12.2011 and statutory notice in terms of Section 138 of NI Act was issued by the 2nd respondent through his counsel on 10.01.2012 i.e. within 30 days as stipulated in Section 138(b) of NI Act. The said notice was received by the petitioner/accused on 13.01.2012 and he got issued a reply notice dated 30.01.2012 through his counsel. The counsel of 2nd respondent/complainant received the reply notice on 09.02.2012 whereas two other postal covers sent to different addresses were returned with the endorsement "*unclaimed by the 2nd respondent*". Learned counsel would argue that as per Section 138 (c) r/w 142 (b) of NI Act, the cause of action for filing the complaint would arise from the date of receipt of notice by the petitioner/accused and from that date onwards, the complaint has to be filed within 45 days (15 days + 30 days). In the instant case, the petitioner/accused received the statutory notice under

Section 138(a) of NI Act on 13.01.2012. Therefore, the 2nd respondent/complainant was required to file the complaint petition on or before 28.02.2012, but he filed the complaint on 30.03.2012 and therefore, the complaint was barred by limitation. It is further argued that the 2nd respondent/complainant can present the cheque with his banker any number of times within the valid period of six months of the cheque, but he is not entitled to present the cheque once after a statutory notice under Section 138 of NI Act was issued. In this regard, he relied upon the judgment of the Apex Court in ***Prem Chand Vijay Kumar vs. Yashpal Singh and another***[1].

5) Learned counsel for 2nd respondent opposed the petition and contended that the allegations in the petition are false to the core and invented for the purpose of petition. He would submit that the complaint was filed well within the period of limitation.

6) The point for determination is:

"Whether there are merits in this petition to allow?"

7) **POINT**: The first ground on which the petitioner seeks quashment is that he paid Rs.1,30,000/- to the 2nd respondent/complainant and obtained receipt and he was due to him only Rs.20,000/-, but not the cheque amount and therefore no legally enforceable debt was in existence by the date of presentation of the cheque in the bank. It is also his case that since there was no due, he instructed his banker to stop payment. The validity of this plea, I am afraid, cannot be decided in the quash petition. The

---

[1] (2005) 4 SCC 417

petitioner has to face trial and vindicate his defence plea by producing cogent evidence to the satisfaction of the trial Court. The second ground is concerned, according to the petitioner, he received the statutory notice on 13.01.2012 and therefore the 2nd respondent/complainant ought to have filed complaint within 45 days i.e. on or before 28.02.2012 but, however, he lodged the complaint on 30.03.2012 and thereby, the complaint was bared by limitation. Along with material papers the petitioner/accused produced the photostat copies of notices that were exchanged between the parties and also cheques, postal receipts and acknowledgments to buttress his contention. In this regard, it must be said that since the original documents are available with the trial Court, the plea of limitation basing on those documents, can be better appreciated by the trial Court to give a finding thereon. Therefore, the petitioner can agitate both the grounds mentioned supra, along with other grounds of defence, if any, before the trial Court by facing the trial.

8) In the result, this Criminal Petition is dismissed giving liberty to the petitioner/accused to raise the defence pleas including the plea of limitation before the trial Court, in which case, the trial Court after full-fledged trial shall pass the judgment on merits after hearing the arguments of both parties.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Dt: 26.10.2018
Murthy