

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.205 of 2018

ORDER:

This Criminal Revision Case is filed by the petitioner/accused under Sections 397 and 401 Cr.P.C. aggrieved by the order dated 10.01.2018 in CrI.M.P.No.5927 of 2017 in C.C.No.121 of 2017 on the file of XXV Special Magistrate, Hyderabad whereby and whereunder the learned Judge dismissed the petition filed by the accused under Section 91 Cr.P.C. to summon the complainant to produce the original postal receipt relating to the statutory notice allegedly issued to the accused under Section 138 of NI Act.

2) Notice served on 2nd respondent/complainant but there is no representation. Heard learned counsel for petitioner.

3) Learned counsel for petitioner would submit the complainant enclosed list of documents to the complaint, one of which is the RPAD postal receipt dated 19.04.2016. However, he has not filed the said postal receipt along with complaint. In the absence of the said postal receipt, it is not possible to conclude that legal notice was dispatched on 19.04.2016 within the statutory period. Therefore, he filed CrI.M.P.No.5927 of 2017 to summon the complainant to produce the original postal receipt. However, the trial Court dismissed the said petition on an erroneous view that since the petitioner/accused received the legal notice and acknowledged the same under Ex.P5—postal acknowledgement, there is no need to summon the postal

receipt as prayed for by him. Learned counsel would strenuously argue that he never admitted the receipt of notice under Ex.P5—postal acknowledgement and therefore, it is not just on the part of trial Court to make such presumption. He would alternatively submit even assuming that he received the notice under Ex.P5—postal acknowledgement on 27.04.2016, it is not a confirmative fact to conclude that the notice was sent on him within the statutory period of limitation prescribed under Section 138 of NI Act. To establish the said fact only he filed CrI.M.P.No.5927 of 2017 to summon the original postal receipt dated 19.04.2016 from the custody of complainant, but the Court erroneously dismissed the said application. He thus prayed to allow the CrI.R.C.

4) On a perusal of the impugned order, I find force in the above submission. Under Section 138(b) of NI Act, the payee or the holder in due course of the cheque, as the case may be, shall make a demand for the payment of the amount covered by dishonoured cheque, by giving to the drawer of the cheque, a notice in writing, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.

5) In the instant case, as per the complaint averments, the cheque was returned by cheque return memo dated 21.03.2016 by the Federal Bank, Koti, Hyderabad. Therefore, under Section 138(b) a duty was cast on him to send notice within 30 days of the receipt of the said information. In that view of the matter, Ex.P5—acknowledgement

even assumed to be received by the petitioner/accused will not help determine the factum of sending legal notice within the statutory period. Hence, the petitioner/accused is right in filing a petition to summon the original postal receipt from the complainant to know the date of sending notice. The trial Court, in my considered view, ought to have allowed the said petition.

6) Accordingly this CrI.R.C. is allowed by setting aside the impugned order dated 10.01.2018 in CrI.M.P.No.5927 of 2017 and consequently the said petition is allowed and the trial Court is directed to summon the complainant to produce the original postal receipt dated 19.04.2016.

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

Date: 27.02.2018
Murthy

U.DURGA PRASAD RAO, J