

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH**

CRIMINAL PETITION No.1187 of 2016

Between:

Annapureddy Srinivasa Reddy

.....Petitioner

and

The State of Andhra Pradesh rep. by its Public Prosecutor and
another

.....Respondents

Date of Judgment pronounced on : 31-12-2018

HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

*** HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO**
+ CRIMINAL PETITION No.1187 of 2016

% 31-12-2018

Between:

Annapureddy Srinivasa Reddy

.....Petitioner

And

\$ The State of Andhra Pradesh rep. by its Public Prosecutor and
another

.....Respondents

< GIST:

> HEAD NOTE:

! Counsel for the petitioner : Sri Shaik Mastan Vali

^ Counsel for the respondents : Sri I Koti Reddy for R.2
Learned PP for R.1

? Cases referred

1. 2010 (1) ALD Cr1 431 AP
2. 2014 (2) SCC 62
3. 1993 (3) SCC 4
4. 1995 (1) SCC 42
5. (1999) 3 SCC 1
6. (1999) 4 SCC 567
7. AIR 2013 SC 3283

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**CRIMINAL PETITION No.1187 of 2016****ORDER:**

The petitioner is the accused in CC.No.147 of 2015 on the file of Judicial Magistrate of First Class, Kanigiri, for the offence under Section 138 of the Negotiable Instruments Act maintained by the 2nd respondent-complainant. This petition is filed to quash the said CC with cognizance order of the learned Magistrate.

2. The contentions in seeking to quash the complaint case are that the complaint was filed on 21.04.2015 for the cheque bearing No.229565 dated 27.01.2015 said to have been issued by the accused in favour of the complainant, when presented returned dishonoured for Rs.20,00,000/- for alleged part discharge of the pronote debt and the cheque was returned dishonoured on 03.02.2015 for funds insufficient, from which within one month thereafter statutory notice was issued that was served on the accused on 03.03.2015 and within 15 days thereafter by 18.03.2015 payment not made and from the cause of action the complaint within one month therefrom stated filed, but in fact not filed within time in saying after the 15 days time for payment ending by 18.03.2015 supra the cause of action for one month to be counted even one day excluded in its counting the complaint must be filed well within 19/20.04.2015 and the same filed on 21.04.2015 is hopelessly after expiry of the cause of action

of one month no way sustainable and thereby liable to be quashed.

3. The learned counsel for the petitioner/accused reiterated the same, whereas the learned counsel for the complainant submits that the complaint is filed well within time and no way bar and the cognizance was rightly taken and there is nothing for the Court to interfere, but for left open of defence to put forth during trial by accused and sought for dismissal.

4. A perusal of the served complaint shows the same was filed before the Court on 21.04.2015 and it contains Court seal with date in the complaint running in 3 pages, the date originally mentioned as 20.04.2015 corrected as 21.04.2015 at the place of signature of complainant and place of signature of advocate though not in the verification portion 3rd line of 20.04.2015. The crux is whether it is filed within 30 days and if not, filed with any application to condone the delay in filing as contemplated by Section 142(b) of the Act. Needless to say if at all any application to condone the delay in filing made it is only after notice and hearing for condoning that delay to be decided and not without hearing for certain rights accrue to the accused after expiry to the statutory notice of one month from cause of action to file the complaint which cannot be interfered without opportunity to accused. The expression in this regard of this Court referring to the Supreme Court in **D.Shyam Sunder Vs. Neella Prabhu**

Lingamurthy and Another¹, leave about the observations in the Constitution Bench expression of the Apex court in **Sarah Mathew Vs. The Institute of Cardio Vascular Diseases by its Director-Dr. K.M. Cherian & Others²**, referring to **Vanka Radhamanohari (Smt) Vs. Vanka Venkata Reddy³** and **State of Maharashtra Vs. Sharadchandra Vinayak Dongre⁴** held as follows:

“At Para 26 it is observed that if the complaint is filed after the period of limitation, the complainant can make an application for condonation of delay under Section 473 Cr.P.C. The Court will have to issue notice to the accused and after hearing the accused and the complainant decide whether to condone the delay or not.

At Para 27 it is observed referring to expression in **Vanka Radhamanohari** supra on the scope of Section 473 Cr.P.C. that the provision enjoins a duty on the court to examine not only whether such delay has been explained but as to whether, it is the requirement of justice to ignore such delay.”

5. From this when undisputedly there is no such application to condone the delay for not a case of filed with any delay condonation application and allowed even, leave about if without opportunity to accused not to sustain. In the facts supra, the only thing to consider now is whether the complaint filed within 30 days from the accrual of cause of action?

¹ 2010 (1) ALD CrI 431 AP

² 2014 (2) SCC 62

³ 1993 (3) SCC 4

⁴ 1995 (1) SCC 42

6. The cheque was as referred supra dishonoured on 03.02.2015 and statutory notice dated 02.03.2015 received by accused on 03.03.2015. It is from date of service of the notice or deemed service of the notice within the statutory period of one month there shall be 15 days waiting to pay the amount. For said 15 days here from the date of service on 03.03.2015 even that date excluded to count 15 days, it expire by 18.03.2015. If that date is excluded, the accrual of cause of action of one month is from 19.03.2015 and if that 19.03.2015 is excluded as per the principle laid down in **Saketh India Limited Vs. India Securities Limited**⁵, which was reiterated by holding as good law and by overruling the contrary principle laid down in **SIL Import, USA Vs. Exim Aides Silk Exporters, Bangalore**⁶, on reference made from the respective Two Judge Bench contrary expressions, the Full Bench in **Econ Antri Limited Vs. Rom Industries Limited**⁷ observed that the limitation of one month in a cheque dishonour case, for the complaint to be filed from the date on which cause of action arise starting day on which cause of action should be excluded for computing the 30 days from the use of the word 'of' may be given exclusion of from and after, if said 19.03.2015 excluded the 30 days to be computed is 20.03.2015 and for the March month 31 days, the 30 days expires by 19.04.2015 and for 19.04.2015

⁵ (1999) 3 SCC 1

⁶ (1999) 4 SCC 567

⁷ AIR 2013 SC 3283

happened to be Sunday, public holiday even excluded though otherwise to be submitted at the residence of the Magistrate even before midnight of the last day to save limitation, the last day for filing the complaint at any cost was 20.04.2015, but filed only on 21.04.2015.

7. Having regard to the above, the complaint filed since hopelessly barred by limitation even for one day is sufficient for date of filing is criteria and not date of cognizance as laid down by the Constitution Bench of the Apex Court in **Sarah Mathew** supra, the cognizance order is set aside and reverted the clock back to the date of filing the complaint as pending at pre-cognizance stage before the learned Magistrate to reconsider the same from any application filed to condone the delay in its filing under Section 142(b) of the amended Act to condone the delay in its filing if any therefrom to hear the complainant and accused and to decide on merits.

8. Accordingly and the in the result, this Criminal Petition is allowed to that extent.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 31.12.2018
Note: L.R. Copy to be marked
(B/o)
ska