

THE HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL PETITION No.7857 of 2011

ORDER:

This petition under Section 482 of Cr.P.C. is filed by the sole accused seeking to quash the proceedings in C.C.No.208 of 2011 pending on the file of Judicial First Class Magistrate, Bapatla, Guntur District.

2. The contention of the petitioner-accused is that the complaint is barred by limitation and that the cheque in dispute is a 'self-cheque' and the same is misused by the complainant-second respondent herein. It is further contended that the second respondent attacked, misbehaved with the petitioner and abused her by touching her caste and as such she lodged a complaint and the same is pending. The present impugned proceedings are nothing but abuse of process of law and hence, the same are liable to be set aside.

3. The second respondent-complainant having received notice did not choose to put up appearance. The learned Assistant Public Prosecutor appearing for the first respondent contended that the present complaint was filed after issuing the statutory notice within the stipulated time and there are no grounds to interfere with the impugned proceedings at this stage.

4. Heard the learned counsel for the petitioner and learned Assistant Public Prosecutor for the first respondent. Perused the material available on record.

5. Now the point that arises for consideration in this petition is:-
“whether there is any *prima facie* material to prosecute the petitioner for the alleged offences?”

6. It is alleged in the complaint that the petitioner herein used to hire the car of the second respondent-complainant. In one occasion, the petitioner engaged the care of the second respondent for shifting her mother to the hospital and at that time, she borrowed a sum of Rs.25,000/- from the second respondent to deposit the same in the hospital and in that connection, the second respondent had taken a cheque bearing No.182442 towards security. The second respondent has also encashed the said cheque for an amount of Rs.30,000/-. While so, on 30.12.2010, the second respondent issued a notice under Section 138 of Negotiable Instruments Act stating that the cheque bearing No.182442 was returned with an endorsement ‘funds insufficient’ and another self-cheque bearing No.285884 alleged to be issued by the petitioner, was not allowed to present for encashment as such demanded to pay the amount covered by the said two cheques within 15 days. The petitioner issued a reply stating that the self-cheque was misplaced and the same is misused by the second respondent. Subsequently, the second respondent issued another legal notice dated 28.01.2011 stating that the cheque bearing No.285884 was returned with an endorsement ‘payment stopped’ and as such he demanded to pay the cheque amount within 15 days. The said notice was received by the petitioner on 29.01.2011.

7. Regarding the contention of the learned counsel for the petitioner that the complaint is barred by limitation, it is a mixed question of fact and law and the same is to be adjudicated by the

trial Court during the course of trial. It is specifically alleged in the complaint that the cheque issued by the petitioner was dishonoured. All the contentions now raised by the petitioner are to be considered by the trial Court during the course of trial. No material is placed to establish any abuse of process of Court and hence, I find no ground to quash the proceedings.

8. In the result, the Criminal Petition is dismissed.

The interim stay granted by this Court on 30.08.2011 in Crl.P.M.P.No.8349 of 2011 shall stand vacated.

Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

26th February 2018
Tsr

JUSTICE N.BALAYOGI

