

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.4117 OF 2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.107 of 2017, on the file of the learned XV Special Magistrate, Hyderabad, registered for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I.Act').

2. Heard the learned counsel for the petitioner/accused and the learned Public Prosecutor for the State of Telangana representing the 1st respondent-State. Perused the material on record.

3. The 2nd respondent filed a private complaint under Section 200 of Cr.P.C. against this petitioner for the offence punishable under Section 138 of the N.I.Act alleging that due to acquaintance and cordial relationship with the 2nd respondent, on 21.01.2016 the accused approached the complainant and requested him to lend an amount of Rs.5,00,000/- as a hand loan and accordingly, a hand loan was arranged on 21.01.2016. Later, after six months from the date of lending, he has requested the petitioner to repay the amount advanced as hand loan and upon the said requests, the petitioner repaid an amount of Rs.48,000/-, while promising to pay the balance of Rs.4,52,000/- within a month. After one month, the complainant again requested the accused/petitioner herein to pay the balance of Rs.4,52,000/- and upon such requests, on 20.09.2016 the accused/petitioner herein has issued a cheque bearing No.809574, dated 20.09.2016, for Rs.2,50,000/- drawn on ICICI Bank, Mehdiapatnam Branch, Hyderabad, towards part payment of the balance amount of Rs.4,52,000/- and on

presentation of the cheque for collection on 20.09.2016, the payee bank returned the cheque with a Cheque Return Memo, dated 17.12.2016, for the reason that “payment stopped by drawer”. Thereafter, a notice, dated 16.01.2017, was got issued to the accused/petitioner herein by the 2nd respondent calling upon him to pay the balance amount of Rs.2,50,000/-, which is covered by the dishonoured cheque bearing No.809574, dated 20.09.2016, within the stipulated time. The notice was served on the accused/petitioner herein and the accused, after receipt of the said notice, neither replied for the same nor has paid the amount covered by the aforesaid cheque. Hence, the complaint.

4. The present petition is filed only on the ground that a statutory notice, as required under Section 138(b) of the N.I.Act, was not served upon the petitioner and thereby, the complaint is not maintainable.

5. During hearing, learned counsel for the petitioner, Sri D.Kodanda Rami Reddy, reiterated the same ground while drawing the attention of this Court to the docket order, dated 06.03.2018, evidencing payment of Rs.50,000/- by the accused/petitioner herein to the 2nd respondent on appearance of both parties before the Court and requested to quash the proceedings against this petitioner. The 1st respondent supported the case of the complainant while contending that notice was served upon the petitioner.

6. As seen from the allegations made in the complaint, a notice, dated 16.01.2017, was sent by Registered Post with Acknowledgment Due (for short, “RPAD”) to the residence of the

accused/petitioner herein calling upon him to repay the amount covered by dishonoured cheque bearing No.809574, dated 20.09.2016. The said notice was served upon the accused/petitioner herein and a Postal Tracking Report of RPAD bearing No.RN1585367191N, dated 17.01.2017, is also filed along with the complaint. The complaint lodged with the Post Master, Kachiguda Post Office, dated 02.02.2017, regarding Postal Tracking Report of RPAD bearing No.RN1585367191N, dated 17.01.2017, and certificate issued under Section 65-B of the Indian Evidence Act, 1872, is also filed along with the complaint. When a notice was addressed to the correct address of the accused/petitioner herein by RPAD, it is deemed to be served in view of Section 27 of the General Clauses Act, 1897.

7. In a decision reported in **I(2007) BC page 96 (Deelip Apte v. Nilesh P.Salgaonkar and another)**, His Lordship Justice N.A.Britto, while deciding the matter under Section 138 of the N.I.Act, held in para 5 of the judgment as follows:

“When notice was sent to the correct address of accused by registered post, the same is deemed to have been served on accused in terms of Section 27, General Clauses Act.”

His Lordship relied on Apex Court judgment in **K.Bhaskaran v. Sankaran Vaighyan Balan and another**) reported in **1999(7) SCC page 510**, wherein the Hon’ble Apex Court decided similar questions and hold that a presumption can be drawn U/Sec.27 of General Clauses Act.

In another decision reported in **2008(8) Supreme Court Cases page 529 (Indo Automobiles v. Jai Durga Enterprises and others)**, the Division Bench consisting of Their Lordships Justice

Tarun Chatterjee and Justice Aftab Alam held as follows:

“It is well settled that once notice sent by registered post with acknowledgment due to the correct address, it must be presumed that the service has been made effectively.”

From the principle laid down in the above two decisions, it is clear that when the notice was sent by registered post to the correct address, it is a deemed service drawing presumption under Section 27 of General Clauses Act. Therefore, the presumption under Section 27 of the General Clauses Act, 1897, is rebuttable and whether notice is served or not is a question to be decided during trial.

8. On the other hand, the petitioner himself appeared before the Court and paid Rs.50,000/- as part of the amount covered by the dishonoured cheque as per the docket order, dated 06.03.2018. In the above judgments, the Supreme Court held that if the amount is paid at least within 15 days from the date of appearance, then he is not liable to be prosecuted. The accused/petitioner herein cannot be exonerated from his criminal liability, more particularly when he is contending that no statutory notice is served. By applying the principles laid down in the above judgments, it is difficult to decide whether notice was served or not, more particularly in view of the presumption under Section 27 of the General Clauses Act, 1897, and quash the proceedings, since it is a disputed question, which has to be decided during trial only. Hence, I find no merit in the petition and it deserves to be dismissed at the stage of admission.

9. In the result, the Criminal Petition is dismissed. However, the petitioner is at liberty to raise the contention of non-compliance of Section 138(b) of the N.I.Act before the trial Court.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 25th July, 2018

KL



241

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



Date: 25th July, 2018

KL