

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.5441 of 2018,

Crl.P.No.5443 of 2018,

AND

Crl.P.No.5602 of 2018

COMMON ORDER

Criminal Petition No.5441 of 2018 is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.86 of 2017 pending on the file of VI Additional Chief Metropolitan Magistrate, Hyderabad, for the offence punishable under Section 138 of the Negotiable Instruments Act.

Criminal Petition No.5443 of 2018 is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.85 of 2017 pending on the file of VI Additional Chief Metropolitan Magistrate, Hyderabad, for the offence punishable under Section 138 of the Negotiable Instruments Act.

Criminal Petition No.5602 of 2018 is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.140 of 2018 pending on the file of XI Special Magistrate, Hyderabad, for the offence punishable under Section 138 of the Negotiable Instruments Act.

The petitioner/accused and the 2nd respondent/complainant are one and the same in all the three criminal petitions, but cheques are different.

The 2nd respondent filed private complaint under Section 200 Cr.P.C. against the petitioner alleging that he advanced Rs.20 lakhs for the business purpose as the petitioner offered to pay 18% interest per annum and also further sum of Rs.10 lakhs through three cheques bearing No.281401, dated 02.12.2011, Cheque bearing Nos.447748 and 447749, both dated 15.12.2011. The petitioner along with Ankamma Chowdary Erra executed an agreement in favour of the 2nd respondent and acknowledged receipt of sum of Rs.20 lakhs on 15.12.2011 incorporating the following terms:

- a) Interest @ 18% for the first year is to be paid at the end of 1s year from the date of agreement.
- b) The principal amount and the interest @ 18% for the second year to be paid at the end of 2nd year from the date of agreement; and
- c) Further sum of Rs.10,00,000/- is to be paid at the end of 30 months from the date of agreement.

Thereafter, the petitioner issued four post dated cheque bearing Nos.034734 to 034736, dated 01.07.2016, 01.09.2016 and 01.11.2016 respectively each for Rs.5,00,000/- and cheque bearing No.034737, dated 01.02.2017 for Rs.4,00,000/- When the said cheques were presented for collection, they were returned with an endorsement 'funds insufficient' and thereafter a notice calling upon the petitioner to pay the amount. covered by the dishonoured cheques. But the petitioner did not heed the legitimate demand of the 2nd respondent. Hence, filed complaints.

The main ground urged before this Court is that the complaints were filed before expiry of time and prematured, payment of amount as the 2nd respondent filed complaint in CrI.P.No.5441 of 2018, before the Court on 02.06.2017, cheque was issued on 10.02.2017 and was presented for collection in the bank and the same was returned on 12.04.2017, complaint in CrI.P.No.5443 of 2018, filed before the Court on 21.12.2016, cheque was issued on 01.07.2017 and 01.09.2016 and was presented for collection in the bank, and the same was returned on 29.09.2016 and that complaint in CrI.P.No.5602 of 2018 filed before the Court on 29.12.2016, cheque was issued on 01.11.2016 and presented for collection in the bank, and the same was returned on 09.11.2016. It is also contended that there are certain admissions with regard to the payment of amount i.e. RTG, which was not covered by

cheques, requested to quash the criminal proceedings against the petitioner.

The petitioner entered into agreement on 15.12.2011 and receipt of Rs.20 lakhs was acknowledged and that the petitioner issued cheques in lieu of discharge of debt due and on presentation of those cheques before the bank, they were returned and thereafter legal notices were issued demanding for payment of the amount covered by dishonoured cheques, which required under Section 138(2) of the N.I. Act. Notices were delivered as per the tracking consignment report. In the legal notices, 15 days time is granted for payment of amount as per the statute and if the amount was not paid within stipulated time, the cause of action for complaints arose in normal course.

Here, the case of the petitioner is that the cause of action does not arise as notices were not served and the complaints are barred by limitation as per Section 138 of the N.I. Act. Acknowledgment of notices is disputed by the petitioner.

Undoubtedly, the cause of action for filing a complaint is failure to pay the amount demanded after serving notice within the time prescribed under Section 138 of the N.I. Act. A similar question came up in **C.C.Alavihaji v Palapatty Muhammed and another**¹, the Apex Court considered various provisions of Evidence Act and Section 27 of the General Clauses Act and concluded that where any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the Court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, in such a case, the complaint is liable to be rejected.

¹ (2007) 6 SCC 555

A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138 of the Act, by drawing statutory presumption until the contrary is proved under Section 27 of the General Clauses Act and Section 114 of the Evidence Act.

Here it is the case of the petitioner that the complaints were not premature and even now the petitioner did not tender the amount covered by the dishonoured cheques. Therefore, the petitioner has no right to contend that the complaints are premature and on that ground the complaints cannot be quashed at this stage.

The other contention raised before this Court is with regard to the transfer of amount by RTG etc will be considered during trial as the same is disputed question of fact. Hence, on this ground, the complaints cannot be quashed. However, it is left open to the petitioner to raise all these contentions before the Court below and in case any such ground is raised notwithstanding the observations and findings recorded in this petition, the Court below is directed to decide the same and dispose of the main case.

Accordingly, the criminal petitions are disposed of.

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

12.06.2018
kvrm

M. SATYANARAYANA MURTHY, J