

HON'BLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No.2760 of 2011

ORDER

This Criminal Petition is filed under Section 482 Cr.P.C. seeking to quash the proceedings in C.C.No.394 of 2010 on the file of the XX Additional Chief Metropolitan Magistrate, City Criminal Courts, Hyderabad.

The contention of the petitioners is that they came to know about the complaint only when they received summons in the year 2010; that they are innocent of the alleged offence and are falsely implicated; that the Court below could not take cognizance of the offence after lapse of one year; it took cognizance only in the year 2010 for the offence alleged to have arisen in the year 2006-2007; that the 2nd respondent was not diligently pursuing the complaint and was consistently delaying the proceedings; that the 2nd respondent has not filed any documents to show that the petitioners have issued the cheques in discharge of a legally enforceable debt; that originally the complaint was signed by one V.V.Satyanarayana, whose authorization was filed along with the complaint, but later, the name of one Ch.Venkat Rao was written in the place of V.V.Satyanarayana and no authorization in his favour was filed and that the complaint is

not maintainable; and that mandatory notice was not served on the 1st petitioner.

On the other hand, learned counsel appearing for the 2nd respondent contended that as the file was mixed with other records, the counsel could not trace out, when immediately after tracing out, originals were produced before the Court; that the notice as contemplated under the Negotiable Instruments Act was sent to the petitioners and it was returned and the same was also filed in the Court; that the 2nd respondent filed authorization of said Ch.Venkat Rao.

A perusal of the original record goes to show that the complaint was filed on 2.1.2007 along with zerox copies of listed documents and the same was returned on 27.11.2008 raising certain objections. On 24.06.2009, it was re-submitted by complying with the objections. Again on 26.06.2009, it was returned. On 1.7.2009, the 2nd respondent-complainant resubmitted the same stating that “the above SR was returned, *inter alia*, for not producing the originals. The counsel for the complainant accordingly informed the complainant who handed over the originals to the counsel in his office. However, as the originals in the file were mixed up in the office of the counsel with the other files of the complainant, the same could not be produced and SR could

not be re-submitted. After a thorough search was made in the office of the counsel, the originals were traced out on 23.6.2009 and SR was re-submitted on 24.06.2009". After re-submission, the learned Magistrate on 1.7.2009 ordered check and put up. The Head Clerk/Superintendent put up a note on 1.7.2009 itself. On 9.7.2009 the counsel for the complainant endorsed "received originals after verification, same will be produced at the time of trial". Subsequently, on 21.07.2009 the matter was called and that as the Presiding Officer was on leave, the matter was posted to 5.8.2009 and at request of the complainant, it was posted to 27.08.2009. Thereafter, from 27.08.2009, the matter was adjourned to 16.09.2009, on which date, sworn statement was recorded and the Court took cognizance.

The above circumstances clearly goes to show that the complaint was filed on 2.1.2007, but for non-production of originals, the Court raised objection and returned the complaint and the case was adjourned from time to time. Finally, on 1.7.2009, originals were produced and after verification, the counsel for the complainant received all the originals *vide* endorsement dated 9.7.2007 with an undertaking that the same will be produced at the time of trial.

Admittedly, the complaint was filed on 2.1.2007 and it was returned due to non-production of originals. The delay was properly explained as the originals were mixed up with other files, the same were traced out on 23.6.2009 and the complaint was resubmitted on 24.06.2009. The trial Court having satisfied with the delay explained, recorded the sworn statement and took cognizance. So far as the delay, returns and re-submission is concerned, it is in between the complainant and the Court with which the petitioners have nothing to do. The petitioners came to know only after receipt of summons and after taking cognizance of the complaint. Further, the contention of the petitioners is that authorization of Ch.Venkat Rao is not filed, but the same is filed as document No.2, which is available in the file. The petitioners further contended that as no notice was served on them, the complaint is not maintainable. Document No.13 pertains to postal receipts. Document No.14 relates to returned postal cover. From the record, it is apparent that the notice was sent to the correct address and did not return in 15 days and therefore, it is deemed that there is proper service.

The notices sent to petitioners 2 and 3 are concerned, they were returned with an endorsement “not claimed”.

Since the facts and circumstances discussed above, I am of the considered view that I do not find any difficulty in taking cognizance for the offence punishable under Section 138 of the Negotiable Instruments Act and the trial Court after recording sworn statement, numbered as C.C.No.204 of 2010, and because of the stay granted, the trial Court could not proceeded further. I do not find that any prejudice is caused to the petitioners. There are no reasons to quash the proceedings.

Accordingly, the Criminal Petition is dismissed. Since the matter pertains to the year of 2006, the trial Court is directed to dispose of the case as expeditiously as possible.

Consequently, the interim stay granted on 28.3.2011 in Crl.M.P.No.2890 of 2011 shall stand vacated.

JUSTICE N.BALAYOGI

23^d January, 2018
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