

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.6455 of 2011

ORDER:

This Criminal Petition is filed by the accused aggrieved by the judgment in Criminal Revision Petition No.63 of 2008 passed by the I Additional Metropolitan Sessions Judge, Visakhapatnam, dismissing the said revision petition by confirming the judgment dated 18.07.2008 in C.C.No.242 of 2006 passed by learned III Metropolitan Magistrate, Visakhapatnam, convicting the accused for the offence under Section 139 of Negotiable Instruments Act, 1881 (for short "the Act") and sentencing to undergo SI for three months and to pay compensation of Rs.50,000/- to the complainant under Section 357 (3) Cr.P.C.

2) For convenience, the parties herein are referred as they stood before the trial Court.

3a) The case of the complainant is that on 25.06.2001, the accused borrowed an amount of Rs.50,000/- and executed a promissory note in favour complainant and on demand he issued a cheque bearing No.517612 dated 02.12.2002 drawn on Indus Ind Bank for Rs.40,000/- as part payment of the pronote. The complainant presented the cheque with his banker and the same was dishonoured with an endorsement '*insufficient funds*' vide memo dated 11.01.2003. The complainant issued legal notice dated 21.01.2003 which was received on 10.02.2003. The accused requested the

complainant for two months time to pay the amount, but he did not pay.

Hence the complaint.

b) During the course of trial, PW1 was examined and Ex.P1 to P6 were marked. On behalf of accused no oral or documentary evidence was adduced.

c) The complainant was examined as PW1 and he deposed in tune with complaint allegations. The defence of the accused before the trial Court was that he did not borrow the amount and the legal notice was not received by him as it was sent to a wrong address and the case was not maintainable. He also denied issuance of Ex.P6—assurance letter dated 10.02.2003. The trial Court having perused Exs.P1 to P6 and also the evidence of PW1 observed that though accused stated that he never executed pronote, however, the complainant by producing Ex.P1—pronote established that the accused has executed pronote and borrowed the amount under it. It further observed the contention of accused that he gave an empty pronote and empty cheque to one Vijay Kumar and from whom the complainant obtained the said empty pronote and empty cheque could not be established. Thus, the trial Court gave a finding that Ex.P1—pronote was a genuine one, as the accused did not deny his signature on Ex.P1—pronote as well as Ex.P2—cheque and he failed to prove that pronote and cheque were obtained by the complainant from one Vijay Kumar as alleged.

d) The trial Court further observed that PW1—complainant presented the cheque for collection. It was returned with an endorsement '*insufficient funds*' which was evident from Ex.P3—cheque return memo. Therefore, the presumption under Section 139 followed. The trial also observed that though the accused denied having received the notice however, Ex.P4—office copy of legal notice and Ex.P5—postal acknowledgement prove that he received notice. It further observed the contention of accused that his name was Md.Saleem but the notice was sent to Sk.Saleem and therefore notice cannot be said to be served on him is unacceptable because in Ex.P1—pronote itself the name of the accused was mentioned as Sk.Saleem @ Md.Saleem. Thus, the trial Court held that notice was sent to the correct address of the accused and it was received by him. Further, Ex.P5 bears the signature of accused.

e) Then coming to Ex.P6—assurance letter, the trial Court observed that the said letter was issued by the accused stating that he received the notice and would pay the amount within two months. Since Ex.P4—notice was received by him under Ex.P5, the contents of Ex.P6—assurance letter was also believed by the trial Court. Taking Ex.P6 into consideration, the trial Court observed that when the accused himself admitted that he received statutory notice, there is no point in denying such receipt of notice. It further observed that during 313 Cr.P.C. examination accused did not say anything about the incriminating evidence that appeared in the deposition of PW1.

Taking all the facts and circumstances and evidence into consideration, the trial Court ultimately held that the complainant could prove guilt of the accused and accordingly convicted and sentenced him.

f) Aggrieved, the accused preferred CrI.R.P.No.63 of 2008 before I Additional Metropolitan Sessions Judge, Visakhapatnam. The said Court framed the following points for determination:

- 1) Whether the accused borrowed a sum of Rs.50,000/- from the complainant and executed the promissory note to that effect and whether there has been a legally enforceable debt in existence?*
- 2) Whether the cheque issued by the accused to the complainant in discharge of the said debt was dishonoured and whether the accused was committed an offence punishable under Section 138 of Negotiable Instruments Act?*
- 3) Whether the impugned judgment of conviction of the trial Court is sustainable under law and whether it warrants interference by this Court and whether the same is liable to be set aside?*
- 4) To what relief?*

g) The revision Court also agreed with the findings of the trial Court and confirmed the judgment of the trial Court by dismissing the Criminal Revision Petition.

Hence the instant Criminal Petition.

4) The main argument of learned counsel for petitioner is that he never borrowed any amount from the complainant and he has not received the statutory notice and he also did not issue Ex.P6—assurance letter to the complainant. In addition to it, learned counsel would argue that even assuming that he issued the cheque and the same was bounded and notices were exchanged, still the criminal complaint is not maintainable in view of the fact that same is barred by limitation. In expatiation, learned counsel would submit that notice was sent to the complainant on 21.01.2003 and the same was received by the accused on 26.01.2003. Admittedly he did not pay the amount. Even assuming that he issued Ex.P6—assurance letter, the said letter will not defer the running of limitation from 26.01.2003 onwards. Therefore, the complainant ought to have filed CC within 45 days from the date of receipt of notice by the accused i.e. 26.01.2003. However, he filed the complaint on 11.04.2003. Hence the complaint was barred by limitation. He thus prayed to allow the Criminal Petition.

5) The notice sent to respondent/complainant could not be served as he was not found in the address mentioned in the notice. Hence, heard learned counsel for petitioner.

6) The point for determination is:

“Whether there are merits in this Criminal Petition to allow?”

7) **POINT**: It is to be noted that contention of petitioner that he did not borrow any amount and he did not issue any cheque and on the other hand the empty pronote and empty cheque given to Vijay Kumar were somehow secured by the complainant and he filed a false complaint against him did not find favour with the trial Court as well as lower revision Court and having regard to the overwhelming oral and documentary evidence, both the Courts below held that accused has executed pronote in favour of complainant and in due discharge of debt amount, he issued Ex.P2—cheque. In view of aforesaid concurrent finding given by the Courts below, I see no reason to come to a different conclusion. Therefore, in this Criminal Petition the only point that arises for consideration is, whether the complaint is barred by limitation as argued.

8) On a close scrutiny of the entire material on record, I find no force in the argument of learned counsel for petitioner in this regard. Both the Courts below have placed reliance on Ex.P6—assurance letter issued by the accused whereunder, he prayed for two months time to pay the pronote amount. Ex.P6 is dated 10.02.2003. Therefore, the complainant waited for some more time and then filed the complaint on 11.04.2003. Record shows that trial Court has taken an objection regarding maintainability of complaint and as per the representation dated 16.06.2003, the complainant submitted complaint was not barred by limitation in view of Ex.P6. Thereafter, the complaint petition was processed and numbered. Under proviso to

Section 142(1)(b) of NI Act, cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.

9) In that view, the trial Court's taking cognizance of the complaint basing on the representation made by the complainant cannot be impugned. Therefore, the argument of learned counsel for petitioner that complaint was barred by limitation cannot be accepted.

10) So, on a conspectus of facts and evidence, I find no merits in the Criminal Petition and accordingly, the same is dismissed by confirming the judgment in CrI.R.P.No.63 of 2008 passed by learned I Additional Metropolitan Sessions Judge, Visakhapatnam.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 09.08.2018
Murthy