

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.1063 of 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.471 of 2016 pending on the file of III Additional Chief Metropolitan Magistrate, Vijayawada, Krishna District, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act').

2. The 2nd respondent, M/s Prakash Arts Pvt. Ltd. filed private complaint alleging that there was a contract between him and the petitioner for fixing panel boards of MTC buses and work order dated 17.12.2009 was given for relocating advertisement on back panels of 384 buses to rear side panel board. MCT Chennai has issued notification of award of license vide letter No.1751/A1/TT-3 & G/MTC/09, dated 04.01.2010.

3. The petitioner which is the ad agency, approached the 2nd respondent and requested to display the advertisement of back panel boards of MTC, Chennai. Accordingly, the 2nd respondent displayed advertisements as per the requirement. Subsequently, the petitioner issued four cheques bearing Nos.005626, dated 28.02.2012 for Rs.4,96,350/-, 005627, dated 31.03.2012 for Rs.4,96,350/-, 005628, dated 30.04.2012 for Rs.4,96,350/- and 000629, dated 31.05.2012 for Rs.4,96,350/- drawn on Kotak Mahindra Bank, Chennai

towards part payment of the above legally enforceable debt due to the 2nd respondent. The 2nd respondent presented first two cheques dated 28.02.2012 and 31.03.2012 with Indian Overseas Bank, Governorpet, Vijayawada, for collection, but the said two cheques were returned unpaid by the payee bank. When the said fact was intimated to the petitioner, the petitioner requested the 2nd respondent to present those two cheques along with the 3rd cheque dated 30.04.2012. Accordingly, the 2nd respondent presented those cheques for collection, but they were returned unpaid. When the 2nd respondent informed the same to the petitioner, he again requested to present the said cheques along with the 4th cheque dated 31.05.2012, while assuring the 2nd respondent that this time the cheques would be honoured. Again the 2nd respondent presented those cheques, but the said cheques were also returned on 07.05.2012 for the reason "funds insufficient and payments were stopped". The petitioner issued those four cheques towards discharge of legally enforceable debt. Therefore, the 2nd respondent issued a notice, dated 30.06.2012 in compliance of Clause (b) to proviso under Section 138 of the Act, calling upon the petitioner to pay the amount covered by the four cheques dishonoured within 15 days from the date of receipt of notice. The petitioner having received notice got issued reply on 31.07.2012 denying his liability to pay the amount. Thereafter, the 2nd respondent filed complaint on 13.08.2012

before the III Additional Chief Metropolitan Magistrate, Vijayawada. The said complaint was taken on file by the Magistrate and issued summons.

4. It is submitted by learned counsel for the petitioner that the 2nd respondent did not comply with the mandatory requirement under Section 138 of the Act and thereby, notice is not issued in compliance of Clause (b) of proviso to Section 138 of the Act. Therefore, the proceedings against the petitioner cannot be continued for the offence punishable under Section 138 of the At.

5. During hearing, learned counsel for the petitioner while reiterating the said contention, drew the attention of this Court to the judgment in **Mamidi Prasanthi v State of Andhra Pradesh and another**¹ and requested this Court to pass appropriate orders.

6. Whereas, learned counsel for the 2nd respondent contended that the validity of the notice is to be decided only during trial and at this stage, this Court cannot quash the proceedings since it is a disputed question of fact and requested the Court to dismiss the criminal petition.

7. The scope of Section 482 Cr.P.C is limited and this Court can exercise its inherent jurisdiction only to give effect to the orders passed under the Code or prevent abuse of process of the Court or to secure the ends of justice.

¹ 2013(2)ALD (CrI) 699 (AP)

8. The admitted facts as per the complaint are that two cheques were dishonoured on one occasion and three cheques were dishonoured on one occasion on presentation and consequently returned with an endorsement 'funds insufficient and payment stopped' along with by cheque return memo dated 07.05.2012. Notice in compliance of clause (b) of proviso to Section 138 of the Act was issued on 30.06.2012 i.e. beyond one month prescribed. Therefore, notice of demand calling upon the petitioner for payment of the amount covered by unpaid cheques bearing Nos. 005626 to 005628 along with cheque bearing No.005629 dated 31.05.2012 drawn on Kotak Mahindra Bank Ltd., Chennai by the payee bank. As such, the notice demanding payment of amount covered by the cheque bearing No.005629 is within limitation, but the demand made for recovery of amount covered by the other cheques was beyond limitation. In **Mamidi Prasanthi's** case referred supra, the single Judge of this Court held as follows:

"The factual aspect of the cheque being returned on 09.05.2011 on the ground of closure of account is not disputed by the Counsel appearing for the second respondent-complainant. Once the cheque has been returned on the ground of closure of account, question of re-presenting the cheque does not arise. Admittedly, statutory notice calling upon the petitioner to pay the cheque amount has been issued after expiry of the period provided under Section 138(b) of the Negotiable Instruments Act, 1881. Therefore, the complaint filed by the second respondent-complainant before the Judicial First Class Magistrate, Jangareddigudem, apparently barred by limitation. In that view of the matter, I find that the continuance of the proceedings against the petitioner in C.C.No.573 of 2012 on the file of the Judicial First Class Magistrate, Jangareddigudem, amounts to abuse of process of Court."

9. The facts of the above judgment are identical to the present facts of the case. Therefore, applying the principle laid down in the above judgment, I have no hesitation to hold that the prosecution against the petitioner for the offence punishable under Section 138 of the Act for the cheque bearing No.005629, dated 31.05.2012 is not barred by limitation and notice issued in compliance of clause (b) of proviso to Section 138 of the Act is in time. The demand for recovery of amount covered by cheque bearing No.005629 is within limitation in view of cheque return memo dated 04.06.2012. Therefore, the proceeding against the petitioner in C.C.No.471 of 2016 pending on the file of III Additional Chief Metropolitan Magistrate, Vijayawada in respect of cheques bearing No.005626 to 005628 are hereby quashed while permitting the trial Court to proceed against the petitioner for the offence punishable under Section 138 of the Act relating to cheque bearing No.005629.

10. Accordingly, the Criminal Petition is allowed in part.

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

JUSTICE M. SATYANARAYANA MURTHY

03.01.2018
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