

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.10488 of 2011

ORDER:

This petition is filed by the petitioners, who are the accused, seeking to quash the STC No.69 of 2011 on the file of the court VI Additional Judicial Magistrate OF First Class, M.R.Palli, Tirupati. The offences alleged are under Sections 141 and 141 of Negotiable Instruments Act, 1881.

2. Heard the counsel for the petitioners and the Public Prosecutor appearing for the 2nd respondent. None appears for the 1st respondent, in spite of notice.

3. As per the complaint, the petitioners, who are the accused in the case, have taken stocks for an amount of Rs.6,80,614/- and issued disputed cheques. The cheques were dishonoured and returned with an endorsement, 'payment stopped' by the drawer on 19.08.2006. Another cheque was presented on 17.08.2006 and the same was returned on the same day with the same endorsement. Other cheques were presented on 23.08.2006 and they were also dishonoured on the same ground. The same was informed to the accused, but no payment was made. The accused requested to present the cheques again for collection. Believing his words, the complainant presented the cheques, but again they were dishonoured on the ground of 'payment stopped and account closed'. After receiving said endorsement, the complainant sent a legal notice,

dated 19.12.2006, since the accused did not pay the amounts due under the cheques.

4. Now the only point that the counsel for the petitioners argues is that on the same cheque, there cannot be two notices issued. The first notice was issued on 06.09.2006 for the dishonour of cheques under Section 138 NI Act, but no complaint was filed in pursuance of the said notice. Another notice was issued on 19.12.2006 and this complaint is filed in pursuance of the said notice.

5. The judgment of the apex court reported in *Prem Chand Vijay Kumar v. Yashpal Singh and another*¹ touches upon this aspect and it was held therein that there is no embargo on presentation of cheques any number of times within the date of its expiry. But when once the notice is issued, on the basis of the dishonour of the cheques, the complaint has to be filed within the prescribed period and no fresh notice can be given on the basis of the same cause of action, which is the basis of the first notice. It was further held therein that, 'Thus, it is well settled that if dishonour of a cheque has once snowballed into a cause of action it is not permissible for a payee to create another cause of action with the same cheque. The period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of the receipt of the notice by the drawer expires.' In this case also, the facts are similar.

¹ (2005) 4 SCC 471

6. Hence, considering the above, this court opines that continuation of further proceedings against the petitioners would only result in abuse of process of law.

With the above observations, the Criminal Petition is allowed and the proceedings in STC No.69 of 2011 on the file of the court VI Additional Judicial Magistrate OF First Class, M.R.Palli, Tirupati, against the petitioners, are hereby quashed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

November 26, 2018
LMV



T. RAJANI, J