

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.4643 of 2015

ORDER :

The petitioner is the complainant. The 1st respondent is the accused in C.C.No.23 of 2014 on the file of the Judicial First Class Magistrate, Special Mobile Court, at Sanga Reddy of Medak District. The learned Magistrate taken cognizance for the offence under Section 138 of the Negotiable Instruments Act on the private complaint of the petitioner against the accused for the offence supra.

2. The complaint averments show particularly from para 5 that the accused issued on 03.05.2013 two post dated cheques drawn on Bank of Baroda, Warangal Branch, besides executed an undertaking letter and when the cheques deposited through the complainant's Banker i.e., Andhra Bank, Sadasivpet Branch, those were returned dishonoured for funds insufficient and when asked the accused regarding the dishonour and to pay orally, he asked to represent again after one week and again presented the two cheques through the same Bank and returned again dishonoured for funds insufficient as per cheque return memo, dated 23.07.2013, and again accused made a request to present after one month because of financial crisis and by believing him again presented on 23.08.2013 and the same were again returned dishonoured as per the return memo, dated 02.09.2013. Therefrom, issued legal notice, dated 25.09.2013, served on accused at the office address and at the residential address, returned unclaimed with no reply, thereby liable.

3. The complaint filed at Judicial First Class Magistrate Court at Sanga Reddy. The Andhra Bank, Sadasivpet Branch, where the cheques presented returned dishonoured is within the jurisdiction of learned Magistrate, Sanga Reddy. After taken cognizance pursuant to the above by the learned Magistrate of the private complaint case against the accused as detailed supra from the expression of the Apex Court in **Dashrath Rupsingh Rathod v. State of Maharashtra and another**¹. The expression unsettled the earlier settled law covered by the Apex Court's expression in **K. Bhaskaran v. Sankaran Vaidhyan Balan**² with reference to Sections 177 to 179 of Cr.P.C. as applicable for the offence under the N.I. Act. Subsequently there was an amendment to Section 142 of the N.I. Act by incorporating sub section (2) with effect from 15.06.2015 by amended Act 26 of 2015 and Section 142 (a) also incorporated by that Act with retrospective effect validating the cases already filed. The learned Magistrate now by the impugned docket order observed that as per Dashrath Rupsingh Rathod supra, the complaint is to be returned to present in proper Court having jurisdiction. The learned Magistrate did not consider the amendments to Section 142 and 142(a) of the N.I. Act nor the petitioner could bring to the notice of the Court the said factum. Had it been, there is nothing to return having not returned by the time the amendment came into force. Thereby, the learned Magistrate is directed to proceed with the trial, by virtue of this order, otherwise conferring jurisdiction by treating as transfer, according to law.

¹ (2014) 9 SCC 129

² (1999) 7 SCC 510

4. With the above direction, the criminal petition is disposed of.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

5th December 2018.

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