

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.9990 of 2017

ORDER :

The petitioner is the accused in C.C.No.38 of 2017 on the file of the II Special Magistrate Court, Visakhapatnam (Old C.C.No.120 of 2014 of III Metropolitan Magistrate Court, Visakhapatnam), it is out come of private complaint of the 2nd respondent/complainant for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'), that was taken cognizance from the dishonour of the cheque and after intimation of the dishonour from the statutory notice allegedly not paid and from the accrual of cause of action. Impugning the cognizance order, the accused/petitioner filed the present petition in seeking to quash the proceedings.

2. One of the contentions is that the statutory notice contemplated by Section 138 NI Act after dishonour of the cheque not given within 30 days from the date of intimation of the Bank of the dishonour to the complainant. A perusal of the complaint nowhere shows including from the statutory legal notice as to when the complainant received the cheque dishonour memo from the Bank as 30 days period of limitation commences therefrom for accrual of cause of action if notice not honoured within the time stipulated after receipt of notice to count the one month therefrom. The crucial fact to be ascertained is what is the date of receipt of the cheque dishonour memo. In the absence of the date of receipt of the cheque dishonour memo in the complaint, the

cognizance taken by the learned Magistrate as to the cause survives within the limitation period or not no way sustains.

3. Having regard to the above, the cognizance order of the learned Magistrate is set aside and the complaint reverted back to the Magistrate to the pre-cognizance stage and if at all any material filed by the complainant to show that notice given 30 days, the Court can proceed with by issuing fresh summons.

4. Accordingly, the criminal petition is disposed of. It is made clear that from the expression of Apex Court in **Sarah Mathew vs. Institute of Cardio Vascular Diseases**¹, date of filing of the complaint is the criteria for counting limitation and not date of cognizance.

Miscellaneous petitions pending, if any, shall stand closed.

10th December 2018.

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Dr. B. SIVA SANKARA RAO, J

¹ (2014)2 SCC 62