

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.11543 OF 2017

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C by the petitioner/ accused, seeking to quash the proceedings in C.C.No.259 of 2017 on the file of the Judicial First Class Magistrate, Kothavalasa, Vizianagaram District, where taken cognizance for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act').

2. Heard learned counsel for the petitioner, learned Public Prosecutor appearing for the State and the learned counsel appearing for the 2nd respondent/ de facto complainant.

3. The above C.C. is outcome of the private complaint of the 2nd respondent for dishonour of the cheque bearing No.404432, dated 26.01.2017, drawn on State Bank of India, Isukathota Branch, Visakhapatnam District, in the words mentioned as Rupees Eighty Lakhs fifty thousand only and in the figures mentioned as Rs.8,50,000/- . Had in the words 'y' is not there, it is tallying for Rs.8,50,000/- but for adding of 'y' making it '80' instead of '8' from the difference pointed out, it is the contention thereby, that the legal notice issued for dishonour of the cheque mentioning the amount as if cheque issued for Rs.8,50,000/- is not a statutorily required notice as contemplated by law and there is no legally enforceable debt. It is mentioned that the cheque issued is

for the promissory note debt dated 10.05.2015 borrowed of Rs.8,50,000/ -.

4. The learned counsel for the petitioner drawn the attention of this Court to Section 18 of the Act, which reads that if the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid. Referring to it, a Full Bench judgment of Jammu and Kashmir High Court in the Jammu and Kashmir Bank Ltd v. Qazi Taj Din¹, when reference made, answered saying the amount undertaken to be paid should be the amount mentioned in words in the body of the promissory note and not the amount specified in figures in the corner of the promissory note. For that, it referred Halsbury's Laws of England, Vol.2 page 468 stating it is customary for bills and notes to have the amount written in figures at the top of the instrument and in words body of the instrument, where there is a discrepancy between the two the sum denoted by the words is the amount payable and evidence cannot be adduced to show that in fact there was a mistake made in omitting words in the body of the instrument. Even taken there from of the amount due under the cheque as per Section 18 is for Rs.80,50,000/ - and the notice issued demanding the cheque has issued only for the promissory note debt of Rs.8,50,000/ - by confining the

¹ AIR 1954 Jammu and Kashmir 56

contention that there is no legally enforceable debt not presumption under Section 139 of the Act has no application is untenable, as there is a legally enforceable debt to the extent mentioned in the notice and in the private complaint case covered by promissory note debt.

5. Now coming to the contention of the notice not statutorily issued and once notice invalid, there is no accrual cause of action to sustain the complaint under Section 138 of the Negotiable Instruments Act concerned, two expressions of the Single Judges of this Court in Yankay Drugs and Pharmaceuticals v. Citi Bank, Madras², wherein it was observed that the notice issued by demanding the amount is not the amount covered by the cheque that was dishonoured, there is no requirement of compliance under Section 138(b) of the Act and the proceedings are liable to be quashed and for that referred Kerala High Court judgment in Raj v. Rajan³ and it is mentioned that the learned counsel relied upon the expression of the Apex Court in Yankay Drugs and Pharmaceuticals (supra) also quoted with approval of another Single Judge of this Court in Tci Finance Ltd. v. State of A.P.⁴, wherein it is observed at para-19 that it is an undisputed fact that the notice under Section 138 proviso (b) of the Act was not issued for the amount covered by the

² 2001(3) ALD 830

³ 1997(1) ALT CrI 359 (Ker)

⁴ 2004(1)ALD CrI.979

cheque, therefore, it falls short of the fulfillment of the requirements under Section 138 of the Act and it cannot be treated as valid notice. In the absence of a valid notice, the prosecution under Section 138 of the Act cannot be maintained. They referred at para-16 the judgment in K.R.Indira v. Dr.G.Audinarayana, where the Supreme Court while considering the scope of Section 138(b) of the Act held that in the notice issued with a specific demand for payment of the sum of the cheque dishonoured has to be made. If the notice provides sufficient information envisaged by the statutory provision and contains the specific demand, the mere fact that it was a consolidated notice, and/or that further demands in addition to the statutorily envisaged demand cannot be also found to have been made will not invalidate the same. In the absence of specific demand for the cheque amount, the notice was held to be invalid.

6. As per the notice and the complaint what was the cheque issued was for Rs.8,50,000/- and as per Section 18 of the Act with reference to perusal of the cheque in the words it is mentioned as Rs.80,50,000/- and in the figures Rs.8,50,000/- and what the complainant says what was the amount due under the promissory note for which cheque issued only Rs.8,50,000/-. Though from the expression of the Full bench of the Jammu & Kashmir High Court (supra) when amount in variance between figures and words it cannot be

taken of what is mentioned in the figures but for the words concerned that was filled amount is in figures higher than in letters, definitely the party cannot be suffered from that mistake in giving preference to the words rather than figures. However, whether it is squarely applicable as a principle laid down to the facts on hand is a matter to be decided in trial.

7. Having regard to the above, by left open such contention, the Criminal petition is disposed of, for not readily able to quash the proceedings.

8. Miscellaneous petitions pending if any, shall stand closed.

Date: 29.11.2018
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Dr. B. SIVA SANKARA RAO, J

