

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No.1768 of 2019

ORDER:

1. The petitioner, who is accused in C.C.No.135 of 2018 on the file of the XII-Special Magistrate, L.B.Nagar at Hasthinapuram, Ranga Reddy District, filed this Criminal Petition under Section 482 Cr.P.C. to quash the proceedings initiated against him in the above C.C.

2. The brief facts of the case are that the 2nd respondent herein filed a private complaint against the petitioner/accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short "the Act"), alleging that the petitioner/accused, approached and requested him to advance a sum of Rs.2,00,000/- for the purpose of purchasing a Car. Considering the said request, the 2nd respondent has advanced the loan amount of Rs.2,00,000/- on 11.04.2016. After receiving the said amount, the petitioner/accused executed a demand promissory note in favour of the 2nd respondent agreeing to repay the same with interest and that he has paid the interest component from 11.04.2016 to 11.02.2017 and for payment of principal amount, the petitioner/accused issued a cheque bearing No.111157 dated 19.07.2018 for Rs.2,00,000/- drawn on IDBI Bank, Mansoorabad Branch. When the said cheque was presented in the account of the 2nd respondent in State Bank of India, Arunodaya Nagar Branch, Nagole, Hyderabad, for realization, the same was dishonoured due to "funds insufficient". After complying with all

the requirements as contemplated under the Act, a private complaint came to be filed by the 2nd respondent herein.

3. Heard learned Counsel for the petitioner/accused, learned Additional Public Prosecutor for the 1st respondent and learned Counsel appearing for the 2nd respondent.

4. It has been submitted on behalf of the petitioner/accused that after receiving the cheque return memo, the 2nd respondent must send the statutory legal notice to the petitioner within one month. But, the 2nd respondent has sent the legal notice to the insufficient address of the petitioner/accused on 03.07.2018, as such the same was returned un-served. Later, the Counsel for the 2nd respondent appended the legal notice to the house of the petitioner with the help of an Advocate-Commissioner. It is also stated that as there was no proper service of notice as required under the provisions of the Negotiable Instruments Act, 1881, continuation of proceedings against the petitioner/accused would be an abuse of process of law.

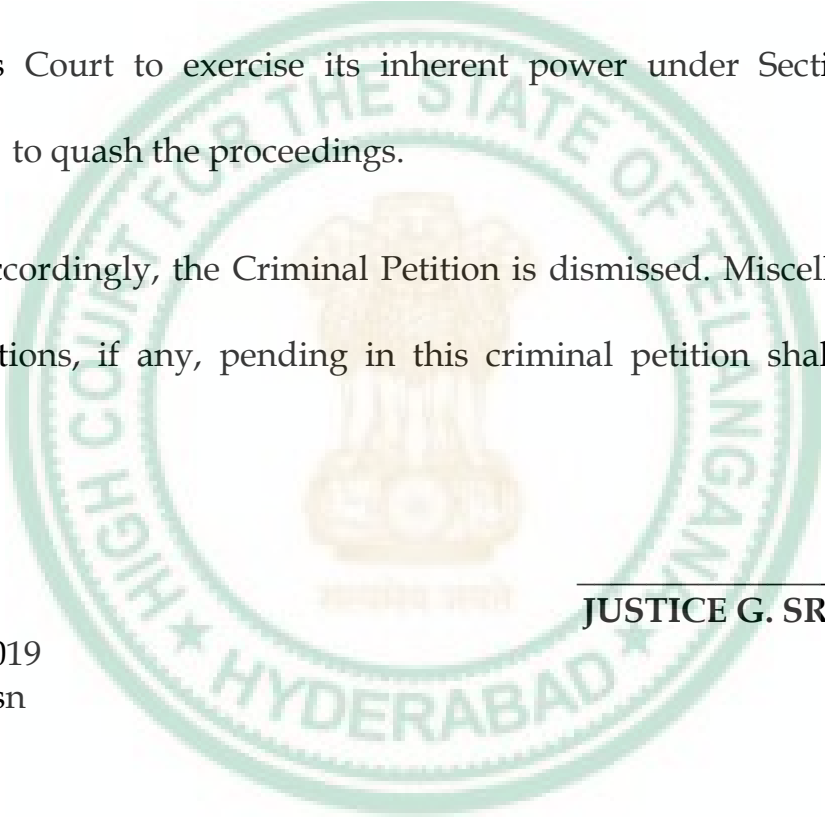
5. Learned counsel appearing for the 2nd respondent would submit that the petitioner/accused has received the notice and got issued a reply notice on 04.09.2018. As such the question of non-service of notice would not arise.

6. The material placed before the Court would clearly indicate that the trial in the said case has already been commenced and the 2nd respondent/complainant(P.W.1) was also cross-examined. The

defence of the learned Counsel for the petitioner/accused is that there was no proper service of mandatory notice. The complaint itself discloses that in resultant to the personal service of the legal notice, the petitioner/accused has got issued a reply notice, dated 04.09.2018 through his Counsel, admitting the acquaintance and legally enforceable debt etc. In view of the admission made by the petitioner/accused through his reply notice and since the trial has already been commenced in the above said case, it will not be proper for this Court to exercise its inherent power under Section 482 Cr.P.C. to quash the proceedings.

7. Accordingly, the Criminal Petition is dismissed. Miscellaneous applications, if any, pending in this criminal petition shall stand closed.

05.11.2019
gkv/Gsn

A large, faint, circular watermark seal of the High Court for the State of Telangana, Hyderabad, is centered in the background. It features the state emblem of India in the center, surrounded by the text 'HIGH COURT FOR THE STATE OF TELANGANA' and 'HYDERABAD' at the bottom.
JUSTICE G. SRI DEVI

