HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.2755 of 2016

ORDER :

The petitioner is the accused in CC.No.30 of 2015 on the file of the III Additional Special Magistrate, Erramanzil, taken cognizance for the offence punishable under Section 138 of Negotiable Instruments Act. Pending the said cognizance order, the quash petition is filed.

2. Notice served on the 2nd respondent appearing through Advocate.

3. Heard learned counsel for the petitioner/accused and the 2nd respondent/complainant and perused the contentions in the grounds and the contents of the statutory notice for alleged non-payment to accrue cause of action to maintain private complaint as contemplated by Sections 138 and 142 of Negotiable Instruments Act and also the decision of the Hon'ble Apex Court in the case of ***K.R. INDIRA vs. DR.G.ADINARAYANA*** [1] and Notes relevant pages 851 to 854 of the Negotiable Instruments Act on the dishonour of cheques placed reliance by the learned counsel for the 2nd respondent/complainant particularly to the Head Note 633which refers to the Judgment of the Kerala High Court in the case of ***M.SAMSUDHEEN vs. V.P. SOUNDER RAJAN*** [2].

4. The statutory notice reads that the accused received from the complainant Rs.20 lakhs on 12.9.2012 and executed on demand, promissory note by acknowledging the consideration there under and promised to pay without interest within a month and later for the demands failed to return and while so, in the first week of February,

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[1] (2003) 8 SCC 300

[2] 2005 Cri LJ 1278 (Ker.)

2014, issued cheque dated 26.2.2014 bearing No.166884 for Rs.15 lakhs as part payment drawn on Andhra Bank, Srinagar Colony branch in favour of the complainant. On presenting the said cheque, the same was dishonoured and returned for insufficient funds. For issuing the cheque without sufficient balance in the account, is liable for punishment under Section 138 of Negotiable Instruments Act apart from Sections 406 and 420 of IPC. Therefore, as per the statute, 15 days time is being given to the accused to clear the liability of the cheque amount of Rs.20 lakhs with interest @ 18% p.a. from the date of transaction or else would be constrained to file civil and criminal cases.

5. The cheque in question from the very notice is dated 26.2.2014 for Rs.15 lakhs. The demand in question is as if the liability under the cheque is for Rs.20 lakhs. It is not even the case of the complainant that besides Rs.15 lakhs to compromise, Rs.20 lakhs as further amount under the promissory note is also liable to be paid. Thus, as per the notice, the demand is not for the cheque amount but for the promissory note amount with interest. The Hon'ble Apex Court in the case of ***K.R. INDIRA*** (supra) particularly in para-11, referring to ***SUMAN SETHI*** Case [3] while observing that notice is not invalid for the reason of consolidated notice for two complaints, further held that though no formal notice is prescribed in the provision, the statutory provision indicates in unmistakable terms as to what should be clearly indicated in the notice and what manner of demand it should make. In ***SUMAN SETHI CASE***

[3] (2000) 2 SCC 380

(supra), there is a specific demand in respect of the amount covered by the cheque and the fact that certain additional demands incidental to it, in the form of expenses incurred for clearance and notice charges were also made, did not invalidate the notice. However, in ***K.R. INDIRA*** (supra) observed that from the perusal of the contents of the notice, not only the cheque amounts were different from the alleged loan amounts but the demand was made not of the cheque amounts but only the loan amount as though it is a demand for the loan amount and not the demand for payment of the cheque amount, thereby notice held to be invalid.

6. The observations of the Hon'ble Supreme Court cited supra squarely apply to the case on hand.

7. Coming to the judgment of the Kerala High Court in the case of ***K.SAMSUDHEEN*** (supra), it is mentioned that if a total amount alone is demanded, whereby the accused was unable to know the actual amount covered by the cheque and, therefore, he was prevented from paying back the amount within the legally permitted period, that notice would be an invalid notice.

8. In the instant case, no doubt, as referred to supra, cheque was for Rs.15 lakhs and it was dishonoured. However, the demand is not for the cheque amount but for Rs.20 lakhs instead of Rs.15 lakhs cheque amount.

9. Having regard to the above, the notice is invalid.

10. Hence, the Criminal Petition is allowed quashing the proceedings in C.C.No.30 of 2015 on the file of the III Special Magistrate, Erramanzil, Hyderabad.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 2.1.2019.

KPM