

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.12857 of 2018

ORDER:

The petitioner is the A.1-M/s Sri Shanmukha Agro Traders (for short, 'the M/s SAT') rep. by its Prop. Mrs. Ch. Jayalakshmi, among two accused of A.2-Ch.Madhava Rao, Prop: M/s Sampath Ganesh Trading Company (for short, M/s SGTC') in C.C.No.10 of 2016 on the file of the VIII Special Magistrate, Erramanzil, Hyderabad, outcome of a private complaint of the 1st respondent-M/s Shanmukha Agritech Limited (for short, 'the company') represented by its authorized Signatory, originally M.Venkata Narayana, now permitted to represent by B.Ramesh for the so called offence punishable u/sec.138 of the Negotiable Instruments Act(for short, 'the Act'), based on two cheques bearing Nos. 697868 for Rs.3,10,430/-(Rupees three lakh ten thousand four hundred and thirty only) and 697869 for Rs.3,00,000/- (Rupees three lakhs only) both dt.13.01.2014 drawn on State Bank of India, Kothapet branch, Guntur, from the same when presented returned dishonoured and from statutory notice for non-payment with untenable reply by the A.1 and from accrual of cause of action, the complaint was allegedly filed on 19.03.2014 and after sworn statement, on perusal, the learned Magistrate taken cognizance. The notice sent to the complainant by registered post acknowledged by him is a sufficient service for his failure to attend to decide on merits.

2. Heard the learned counsel for the petitioner/A.1 and for the 2nd respondent-A.2 not necessary party and the service to him also sufficient as left unclaimed; and also the learned counsel for the 1st respondent and the learned Public Prosecutor representing R.3-State and perused the material on record.

3. The contentions in the quash petition mainly are that the alleged cheques were presented on even date 13.01.2014 and the same were returned dishonoured as per the cheque return memo dt.16.01.2014 and the legal notice issued on 15.02.2014 which is also not within 30 days and thereby, taking cognizance is unsustainable with no cause of action accrued thereby the proceedings are liable to be quashed.

4. As per the private complaint the date of offence commenced from 13.01.2016, 16.01.2014 and 15.02.2014. The say that the cheques dated 13.01.2014 presented were dishooured for insufficient funds and the complainant received cheque return memo of the bank on 16.01.2014 and cause issued notice on 15.02.2014 with 15 days time to pay and the legal notice received on 18.02.2014 and A.1 sent reply with untrue allegations and the A.2 left without instructions and notice returned unclaimed.

5. As per the very wording of Section 138 of the Act, from the cheque returned dishonoured from receiving of the dishonour intimation, time for giving statutory notice is within 30 days to pay within 15 days thereafter from time of

service or deemed service and if not paid, cause of action shall accrue.

6. Here the bank cheque return/dishonour memo sent to the complainant was dated 16.01.2014. After that day is excluded from computation of 30 days, till date of notice 15.02.2014, it comes to 30 days for the matter left open as to within 30 days including does not mean 30th day to be excluded and it is date of giving notice within 30 days criteria and not date of serving as from date of serving or deemed serving 15days period to pay for accrual of cause of action is different concept.

7. Now coming to the two cheques in question, a perusal of the two cheques show one Ch.Madhav Rao for M/s SGTC-A.2 signed the cheques and not M/s SAT represented by Ch.Jayalakshmi-A.1-the petitioner herein. There is nothing to show how the A.1 can be made liable. Even taken for arguments sake, the cheque issued by the A.2 is including for any amount due by the A.1 for not A.1 drawer of the cheque and the law is very clear that in the absence of vicarious liability for drawer alone be made liable and not the non-drawer of the cheque as per the expression of the Apex Court in **Aparna Shah Vs. Sheth Developers Pvt.Ltd**¹. In that count, the cognizance order against the petitioner has to be quashed.

¹ 2013 CrL.J.3743

8. Having regard to the above, this Criminal Petition is allowed by quashing the proceedings in C.C.No.10 of 2016 on the file of the VIII Special Magistrate, Erramanzil, Hyderabad. The petitioner/A.1 is acquitted and his bail bonds shall stand cancelled. Consequently, miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:21.01.2019
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