HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No. 12344 of 2017

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. seeking to quash the proceedings in C.C.No.606 of 2017 on the file of the X Metropolitan Magistrate, Kukatpally at Miyapur.

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 read with 141 and 142 of the Negotiable Instruments Act, 1881 (for short "the Act"), alleging that the petitioner/accused, who is his childhood and family friend, approached and requested him for a hand loan of Rs.10,00,000/- for his business requirements. Considering the said request, the 2nd respondent has transferred an amount of Rs.10,00,000/- through RTGS from his bank account to the bank account of the petitioner/accused bearing No.HDFCH 12160450768 on 08.06.2012. To acknowledge the said amount, on 05.11.2013, the petitioner/accused executed hand loan agreement and also promissory notes agreeing to repay the said amount within six months with interest at 3% per month. Though the 2nd respondent made several requests, the petitioner/accused failed to repay the said amount. On much persuasion, in the second week of March, 2017, the petitioner/accused issued post dated cheques bearing No.093830 for Rs.10,00,000/- dated 08.04.2017 and No.093831 for

Rs.5,00,000/- dated 08.04.2017 drawn on Axis Bank Limited, Gachibowli Branch, Hyderabad. When the said cheques were presented in the account of the 2nd respondent in HDFC Bank, Kavuri Hills Branch, Cyberabad, for realization, the same were returned unpaid with an endorsement "Payment Stopped by Drawer". After complying with all the requirements as contemplated under the Act, a private complaint came to be filed by the 2nd respondent herein, which was taken cognizance as C.C.No.606 of 2017. The present Criminal Petition is filed to quash the proceedings in the above C.C.

Notice sent to the 2nd respondent by "Registered Post with Acknowledgment Due" was returned as un-claimed. Taking it as deemed service in view of the provisions of General Clauses Act, the present Criminal Revision Case is disposed of after hearing the learned counsel for the petitioner/accused and learned Additional Public Prosecutor.

Learned counsel for the petitioner/accused submitted that the allegations made in the complaint are all false and do not attract any offence much less the offence under Section 138 of the Act. To attract Section 138 of the Act, the cheques must have been drawn for discharge of existing debt or liability. Assuming without admitting that the petitioner/accused had issued the cheques, for a time barred debt, the proceedings in the C.C. is not maintainable and liable to be dismissed on this ground alone. It is also submitted that the payment of Rs.10,00,000/- made through bank transfer was on 08.06.2012 and the hand loan agreement was executed on 05.11.2013, under which the petitioner/accused allegedly agreed to pay Rs.15,40,000/- on or before 30.11.2013. The alleged agreement has become time barred and admittedly the cheques which were allegedly issued by the petitioner/accused are dated 08.04.2017. Even assuming that the alleged agreement was executed by the petitioner/accused, the cheques were issued after the period of limitation of three years from 05.11.2013. Under Article 19 and 21 of the Limitation Act, 1963, the limitation for enforcing the alleged debt is only three years, as such there is no legally enforceable debt to attract Section 138 of the Negotiable Instruments Act, 1881. It is further submitted that the petitioner/accused never issued the alleged cheques to the 2nd respondent for discharge of any debt much less legally enforceable debt. It is also submitted that the petitioner/accused is not the drawer of the cheques. The petitioner/accused did not receive the mandatory notice and the notice was sent to a wrong address in Vijayawada and the notice sent to Lanco Hills was with incomplete postal address. The said legal notice was returned un-served with an endorsement "Insufficient Address". In support of his contentions, learned counsel for the petitioner/accused relied on the following judgments.

1. ***Girdhari Lal Rathi v. P T V Ramanujachari***[1]
2. ***A.Yesubabu v. D. Appala Swamy and another***[2]
3. ***Sasseriyil Joseph v. Devassia***[3]
4. ***K.Kurnaravel v. R P Rathinam***[4]

Learned Additional Public Prosecutor opposed the Criminal Petition.

Before proceeding further, it would be useful to extract Section 138 of the Act, which reads as under:

> "138. Dishonour of cheque for insufficiency, etc., of funds in the account..- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both:
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> Explanation: Until the debt is legally recoverable the drawer of the cheque cannot be fastened with the liability under Section 138 of the Act."

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[1] (1997) 2 Crimes (HC) 658
[2] (2003) 2 ALD (Crl.) 707 (AP)
[3] (2000) Law Suit (KER) 313
[4] (2010) Law Suit (Madras) 3403

Section 18 of the Limitation Act reads as under:

20. Section 18 of Limitation Act reads :

Section 18--Effect of acknowledgement in writing :

(1) Where before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.

(2) xxx xxx xxx

The above provision makes it clear that period of limitation shall be computed from the time when the hand loan agreement was so signed.

In ***A.V.Murthy v. B.S.Nagabasavanna***[5] the Apex Court held that "for example if the cheque was drawn in respect of a debt or liability payable under a wagering contract, it could have been said that the debt or liability is not legally enforceable as it is a claim which is prohibited under law. Likewise, a time barred debt is also not legally enforceable debt."

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[5] (2002) 2 SCC 642

In ***A.Yesubabu v. D.Appala Swamy and another***[6] a learned Single Judge of this Court also held that "Even assuming for a moment that the accused gave the cheque in the year 1990 ie., on 02.04.1990 acknowledging the previous debt, even that acknowledgment of debt is also time barred on the facts of the case in as much as the cheque in question was issued three years later ie., on 25.08.1994. Therefore, the complainant cannot legally enforce the liability under Ex.P1 and Ex.P2 receipts."

In the instant case, a perusal of the material on record would show that on 08.06.2012 the 2nd respondent had transferred the loan amount of Rs.10,00,000/- through RTGS from his bank account to the bank account of the petitioner/accused. On 05.11.2013, the petitioner/ accused had acknowledged the receipt of the said amount by executing hand loan agreement and also promissory notes. The cheques were issued on 08.04.2017. By the time the cheques were issued, the debt appears to have been barred by limitation because no acknowledgement is alleged to have been obtained by the 2nd respondent from the petitioner/accused before expiry of three years from the date of execution of the hand loan agreement. Thus, it is crystal clear that the debt was not legally enforceable at the time of issuance of the cheque as per the explanation of Section 138 of the Negotiable Instruments Act, 1881.

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[6] (2003) 2 ALD (Crl) 707 (AP)

In view of the law laid down by the Apex Court in ***A.V.Murthy v. B.S.Nagabasavanna (5 supra)*** and having regarding to the facts and circumstances of the case, the proceedings against the petitioner/accused are liable to be quashed.

Accordingly, the Criminal Petition is allowed and the proceedings against the petitioner/accused in C.C.No.606 of 2017 on the file of the X Metropolitan Magistrate, Kukatpally at Miyapur, are hereby quashed.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

09.12.2019
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