



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3396]

**TUESDAY, THE SEVENTH DAY OF MAY
TWO THOUSAND AND TWENTY FOUR**

**PRESENT
THE HONOURABLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA**

CRIMINAL PETITION NO: 7692/2021

Between:

Nallabelle Venkata Ramudu @ Ravi, **...PETITIONER/ACCUSED**

AND

The State Of Andhra Pradesh and **...RESPONDENT/COMPLAINANT(S)**
Others

Counsel for the Petitioner/accused:

1. T V JAGGI REDDY

Counsel for the Respondent/complainant(S):

1. PUBLIC PROSECUTOR (AP)

2. G VENKATESWARLU

The Court made the following:

ORDER:

The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") has been filed by the Petitioner/Accused, seeking quashment of the proceedings against him in C.C.No.50 of 2019 on the file of the Court of the Additional Judicial First Class Magistrate, Markapur, Prakasam District, for the offence punishable under Section 138 of Negotiable Instruments Act, 1881¹.

¹ in short N.I.Act

2. Heard Sri T.V.Jaggi Reddy, learned counsel for the Petitioner and Sri G.Venkateswarlu, learned counsel for Respondent No.2. Ms. D.Prasanna Lakshmi, learned Assistant Public Prosecutor representing the State/Respondent No.1 is in attendance.

3. Learned counsel for the Petitioner would submit that since complaint averments are to the effect that petitioner has taken the loan on 12.09.2014, and the cheque was issued on 10.10.2018, therefore it is a time barred debt. It is further submitted that as there is no legally enforced debt, therefore the question of offence under Section 138 of N.I.Act does not arise. Learned counsel further attacked the complaint on the ground that mandatory notice was sent to a different door number. Accordingly, he prays for quashment of the proceedings.

4. Contrasting the same, learned counsel for Respondent No.2 would submit that when the party receives the Court summons with the same address, any other notices are ought to be received by the party with the same address, therefore the contention of the learned counsel for the petitioner that the mandatory notice has not been received, since it was addressed to different door number, cannot be entertained. In support of their contention, learned counsel placed reliance on the judgment of

Hon'ble Apex Court in ***C.C.Alavi Haji v. Palapetty Muhammed and Another***², wherein it is held that,

“17. It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskaran's case (supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the 'receipt of notice' a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of Section 138 of the Act.

18. In the instant case, the averment made in the complaint in this regard is: Though the complainant issued lawyer's notice intimating the dishonour of cheque and demanded payment on 4.8.2001, the same was returned on 10.8.2001 saying that the accused was out of station. True, there was no averment to the effect that the notice was sent at the correct address of the drawer of the cheque by registered post acknowledgement due. But the returned envelope was annexed to the complaint and it thus, formed a part of the complaint which showed that the notice was sent by registered post acknowledgement due to the correct address and was returned with an endorsement that the addressee was abroad. We are of the view that on facts in hand the requirements of Section 138 of the Act had

² AIR 2007 SC (Supp) 1705

been sufficiently complied with and the decision of the High Court does not call for interference.

19. In the final analysis, with the clarification indicated hereinabove, we reiterate the view expressed by this Court in K. Bhaskaran and Vinod Shivappa's cases (supra)."

(emphasis supplied)

5. Learned counsel further submits that the argument that 'there is no legal enforceable debt', cannot be entertained during the hearing of a quash petition and such contentions are to be raised before the trial Court.

6. Considering the submissions made and a fair look at the averments made in the complaint, as rightly pointed out by the learned counsel for Respondent No.2, it is not a case of petitioner that summons are not served on the petitioner. The petitioner received the Court summons in the same address and appeared before the Court. Hence, the contention that mandatory notice has not been served to the petitioner since it is a different door number, has no force at this stage. As rightly argued, the existence or otherwise of the 'legal enforceable debt' by the date of issuance of cheque is a matter which needs investigation at full length of the trial. Defenses and contentions that are available to the parties cannot be appreciated in a quash petition. This Court cannot give any finding as to the factual aspects of the matter while

exercising the jurisdiction under Section 482 of Cr.P.C. by conducting a mini trial.

7. In that view, the Criminal Petition is dismissed.

As a sequel thereto, miscellaneous petitions pending, if any, shall stand closed.

VENKATA JYOTHIRMAI PRATAPA, J

Date: 07-05-2024
PND