

(SHOW CAUSE NOTICE BEFORE ADMISSION)
IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI
WEDNESDAY, THE FIRST DAY OF FEBRUARY,
TWO THOUSAND AND TWENTY THREE



:PRESENT:

THE HONOURABLE SRI JUSTICE K SREENIVASA REDDY
CRIMINAL PETITION NO: 769 OF 2023

Between:

H. P. Enterprise, Rep by its Proprietor, Smt. H.P Mary, Aged about 35 years, R/o D.No.B-301, 3rd floor, Anjani Heights, N.R. Deva Chakra, Jahangipura, Surath Gujarat 395005

Petitioner/Accused

AND

1. The State of Andhra Pradesh, Rep by Public Prosecutor, The High Court of A.P at Amaravathi,

Respondent

2. Sun Food Corporation, a Proprietary Concern, Rep by its Manager Grandhi VVSS Subrahmanyam, S/o Bheemeswara Rao, aged about 28 years, Manager of the firm Sun Food Corporation, R/o 78-15-21/52, Rama Residency, Syamala Nagar, Rajahmundry.

Respondent/De-facto Complainant

WHEREAS the Petitioner/Accused above named through its Advocate Sri T D PANI KUMAR presented this Petition under Section 482 of Cr.P.C, praying that in the circumstances stated in the memorandum of grounds filed in support of the Criminal Petition, the High Court may be pleased to Quash the C.C. No.137 of 2022 on the file of V Additional Judicial Magistrate of First Class, at Rajahmundry

AND WHEREAS the High Court upon perusing the petition and memorandum of grounds filed herein and upon hearing the arguments of Sri T D PANI KUMAR Advocate for the Petitioner, Assistant Public Prosecutor for the respondent no.1, directed issue of notice to the Respondent No.2 herein to show cause as to why this CRIMINAL PETITION should not be admitted.

You viz:

The Manager Grandhi VVSS Subrahmanyam, Sun Food Corporation, a Proprietary Concern, S/o Bheemeswara Rao, aged about 28 years, Manager of the firm Sun Food Corporation, R/o 78-15-21/52, Rama Residency, Syamala Nagar, Rajahmundry.

are be and hereby directed to show cause either appearing in person or through an Advocate, as to why in the circumstances set out in the petition and the memorandum of grounds filed therewith (copy enclosed) this Criminal Petition should not be admitted within six(6) weeks

IA NO: 1 OF 2023

Petition under Section 482 Cr.P.C praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in C.C. No.137 of 2022 on the file of V Additional Judicial

Magistrate of First Class, At Rajahmundry, pending disposal of CRLP No. 769 of 2023, on the file of the High Court.

The Court made the following

ORDER:

“Learned Assistant Public Prosecutor takes notice for respondent No.1 ~~and seeks time to get instructions in the matter.~~

Issue notice to respondent No.2.

Learned counsel for the petitioner is permitted to take out personal notice to respondent No.2 by RPAD and file proof of service in the Registry within a period of three (3) weeks.

A private complaint has been filed as against the petitioner herein for the offence punishable under Section 138 of the Negotiable Instruments Act. In respect of a transaction, the petitioner herein issued a cheque to the tune of Rs.63,03,101/- to the complainant. The complainant presented the said cheque on 17.12.2019 and the same was returned dishonoured on 18.12.2019 with an endorsement ‘funds insufficient’. It is stated in the complaint that on 21.01.2020, the petitioner credited an amount of Rs.1,80,000/- through NEFT transfer to the account of the complainant. Thereafter, on 07.02.2020, the complainant deposited the cheque for the second time which was returned dishonoured again on 10.02.2020. Thereafter, the complainant issued a notice to the petitioner herein to repay the amount of Rs.61,23,101/-.

Learned counsel for the petitioner has strenuously contended that the cheque has been issued for an amount of Rs.63,03,101/-, but the claim in the notice is only to the extent of Rs.61,23,101/-, which is contrary to the mandatory procedure enumerated under Section 138(b) of the Negotiable Instruments Act. In connection with that, learned counsel for the petitioner has relied on a decision reported in Suman Sethi v. Ajay K. Churiwal (2000) 2 SCC 380, wherein the Hon’ble Apex Court held thus.

“It is a well settled principle of law that the notice has to be read as a whole. In the notice, demand has to be made for the "said amount" i.e. the cheque amount. If no such demand is made, the notice no doubt would fall short of its legal requirement. Where in addition to the "said amount" there is also a claim by way of interest, cost etc. whether the notice is bad

would depend on the language of the notice. If in a notice while giving the break-up of the claim the cheque amount, interest, damages etc. are separately specified, other such claims for interest, cost etc. would be superfluous and these additional claims would be severable and will not invalidate the notice. If, however, in the notice an omnibus demand is made without specifying what was due under the dishonored cheque, the notice might well fail to meet the legal requirement and may be regarded as bad."

Basing on the said principle, the proceedings in the aforesaid case were quashed by the Hon'ble Apex Court.

It is settled principle of law that the notice has to be read as a whole. In the notice issued to the petitioner herein, there should be a demand of the amount which was shown on the cheque, but not on the contrary. In view of the aforesaid facts and circumstances, this Court feels that the above said point needs further examination.

Hence, there shall be interim stay of all further proceedings in CC No.137 of 2022 on the file of learned V Additional Judicial Magistrate of First Class, Rajahmundry, for a period of eight (8) weeks.

List the matter after six (6) weeks."

Sd/- K.TATA RAO
DEPUTY REGISTRAR

RB

//TRUE COPY//

Fc SECTION OFFICER

To,

1. The V Additional Judicial Magistrate of First Class, Rajahmundry, East Godavari District.
2. Manager Grandhi VVSS Subrahmanyam, Sun Food Corporation, a Proprietary Concern, S/o Bheemeswara Rao, aged about 28 years, Manager of the firm Sun Food Corporation, R/o 78-15-21/52, Rama Residency, Syamala Nagar, Rajahmundry.
(by RPAD- along with a copy of petition and memorandum of grounds)
3. One CC to SRI. T D PANI KUMAR Advocate [OPUC]
4. Two CCs to Public Prosecutor (AP) High Court of Andhra Pradesh [OUT]
5. One spare copy

CVSS

HIGH COURT

SRKJ

DATED:01/02/2023

NOTE: LIST THE MATTER AFTER SIX (6) WEEKS.

NOTICE BEFORE ADMISSION

CRLP.No.769 of 2023

DIRECTION

