

HONOURABLE SRI JUSTICE T. MALLIKARJUNA RAO

CRIMINAL REVISION CASE No.660 OF 2023

ORDER:

1) This Criminal Revision Case is preferred by the petitioner-complainant, against the docket order dated 24.05.2023 passed by the I Additional Judicial Magistrate of First Class, Narasaraopet in C.F.R.No.2181 of 2020, whereby the complaint is dismissed for want of proper service of notice issued under Section 138 of Negotiable Instruments Act.

2) The brief facts of the case leading to present criminal revision case are that the revision petitioner herein is the complainant, who filed a private complaint under Section 138 of the Negotiable Instruments Act, 1881, seeking to punish the respondent-accused, for dishonor of cheque issued by him for a sum of Rs.5,90,000/- bearing Cheque No.000002, dated 17.07.2020 drawn on Kotak Mahendra Bank, Narasaraopet Branch, Narasaraopet, towards discharge of legally enforceable debt due to him. When the said cheque was sent by the complainant through his banker i.e. Andhra Bank, Main Branch, Narasaraopet for collection, the same was returned with an endorsement "FUNDS INSUFFICIENT" along with Memo dated 21.07.2020. On receipt of such returned memo, the petitioner-

complainant issued a statutory legal notice on 14.08.2020 demanding payment of cheque amount. The respondent-accused, having knowledge about the issuance of such notice, wantonly returned the same with false allegations. Having no option, the present complaint has been filed before the I Additional Judicial Magistrate of First Class, Narasaraopet. The learned Magistrate dismissed the said complaint, holding that the complainant failed to comply with the conditions stipulated in Section 138 of the Negotiable Instruments Act, as the statutory legal notice was not served on the accused, which is returned with endorsement of "insufficient address for want of door number". The learned Magistrate also held that in order to constitute a case under Section 138 of N.I. Act, a notice must be served to the accused person or the complainant must show his effort regarding serving of statutory notice, which is lacking in the present complaint, as there was no specific door number or land mark of the address of the accused. Challenging the said order, the present Criminal Revision Case is filed.

3) Heard the counsel for the petitioner and the learned counsel for the respondent.

4) Learned Counsel for the petitioner vehemently contended that the findings given by the learned Magistrate is not justified in law and

erroneous, inasmuch as the complainant has rightly complied with the statutory conditions laid down in Section 138 of the N.I. Act, by issuing a statutory legal notice in writing. He further contends the notice was sent to the same address of the respondent as given in the plaint in O.S.No.129 of 2020. He further contends that as per Section 27 of the General Clauses Act, 1897, the expression of giving of notice as contemplated under Section 138 of the Negotiable Instruments Act, 1881, means the serving of notice by properly addressing, pre-paying and posting by registered post and the same is deemed to be served unless a contrary is proved. He further contended that whether the notice was sent is correct or not, is a matter to be decided during enquiry, but not at the stage of numbering the complaint and in fact, the respondent-accused was served with notice on the very same address in O.S.No.129 of 2020, which was filed for recovery of money, wherein the respondent-accused contested the suit.

5) It is the contention of the learned counsel for the revision petitioner that there is no basis for the trial court to come to conclusion that the address furnished by the complainant in the legal notice is insufficient. In support of his contention, the learned counsel has drawn the attention of this Court to the copy of the plaint in

O.S.No.129 of 2020 wherein the address of the defendant who is the accused herein, is shown as follows:-

***Boda Sriharsha Manikantha S/o Hanumantha Rao,
Hindu, aged about 27 years, Private Driver, Near
Siva Reddy Water Plant, Near Railway Under Pass,
Lingamgunta village, Narasaraopet Mandal, Guntur
District.***

Whereas in the legal notice, the same address was mentioned as follows:

***Boda Sriharsha Manikantha S/o Hanumantha Rao,
Near Siva Reddy Water Plant, Near Railway Under
Pass, Lingamgunta, Narasaraopet, Guntur District.***

6) In support of his contention, the learned counsel for the revision petitioner placed a reliance on **N. Paraeswaran Unni v. G. Kannan and another¹**, wherein it is held as under:

“(1) It is clear from Section 37 of the General Clauses Act, 1897 and Section 114 of the India Evidence Act, 1972, that once notice is sent by registered post by correctly addressing to the drawer of the cheque, the service of notice is deemed to have been effected. Then requirements under proviso (b) of Section 138 stands complied, if notice is sent in the prescribed manner. However, the drawer is at liberty to rebut this presumption.

¹ Crl. Appeal No.455 of 2006, dated 01.03.2017

(2) the purport of Section 138 is to prevent and punish the dishonest drawers of cheques who evade and avoid their liability. As explained in Clause (b) of the proviso, the payee or the holder of the cheque in due course is necessarily required to serve a written notice on the drawer of the cheque within fifteen days from the date of intimation received from the bank about dishonor. It is explicitly made clear under Clause (c) of Section 138 of N.I.Act, that this gives an opportunity to a drawer of the cheque to make payment within fifteen days of receipt of such notice sent by the drawee. It is manifest that the object of providing Clause (c) is to avoid unnecessary hardship. Even if the drawer has failed to make payment within fifteen days of receipt of such notice as provided under Clause (c), the drawer shall be deemed to have committed an offence under the Act and thereafter the drawee would be competent to file complaint against the drawer by following the procedure prescribed under Section 142 of the Act. ”

7) From the above, it is clear that as per Section 27 of the General Clauses Act, 1897 and Section 114 of the Indian Evidence Act, 1872, once notice is sent by registered post by correctly addressing to the drawer of the cheque, the service of notice is deemed to have been effected and that the requirements under proviso (b) of Section 138 stands complied, if notice is sent in the prescribed manner and it is for the drawer of the cheque to rebut the presumption.

8) In the instant case, there is no dispute regarding issuance of notice in a prescribed manner, but, the only issue is about serving of notice to the respondent-Accused. A perusal of the material on record

including a copy of the plaint would show that the defendant/accused was served with the notice in the same address and he contested the suit by engaging a counsel. Whereas in the instant case, though the statutory legal notice was issued to the same address, the same was returned.

9) Having regard to the facts and circumstances of the case and the findings given by the Court below in dismissing the complaint suffered from serious legal infirmity warranting interference of this court.

10) Accordingly, the Criminal Revision Case is allowed and the docket order dated 24.05.2023 in C.F.R.No.2181 of 2020 passed by the learned I Additional Judicial Magistrate of First Class, Narasaraopet, is hereby set aside and the learned Magistrate is directed to register the complaint, if it is otherwise in order, and proceed with in accordance with law.

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

JUSTICE T. MALLIKARJUNA RAO

Date: 04.11.2023

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HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO

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Dt.04.11.2023

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