

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CRIMINAL PETITION No.11345 OF 2013

Between:

V. Ravikanth, s/o. Shivaji,
Aged about 35 years, occupation business,
R/o.H.No.68-5-1, Gandhipuram-4,
Lalacheruvu, Rajahmundry – 533 106,
East Godavari District.

... **Petitioner.**

And

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

2) Krishnapatnam Port Company Limited,
Represented by its General Manager,
L. Bharath Reddy, represented by his GPA Holder,
S.K. Masthan, S/o. Mahaboob Saheb,
Aged about 26 years, R/o. D.No.26/350,
Mahatma Gandhi Nagar, Vedayapalem, Nellore.

... **Respondent No.2/Defacto Complainant**

DATE OF ORDER PRONOUNCED: 28.01.2020

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the order? : Yes/No
2. Whether the copy of order may be
marked to Law Reporters/Journals? : Yes/No
3. Whether His Lordship wish to
see the fair copy of the order? : Yes/No

U. DURGA PRASAD RAO, J

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! Counsel for Petitioner : Sri Srinivas Kapatia

^ Counsel for 2nd Respondent : Sri Dammalapati Srinivas

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> Head Note:

? Cases referred:

- 1) 2019(1) ALD (CrI.) 812
- 2) AIR 1995 SC 231

This court made the following :

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**Criminal Petition No.11345 of 2013****ORDER:**

In this petition filed under Section 482 of Cr.P.C, the petitioner/accused seeks to quash proceedings against him in C.C.No.294 of 2012 which was taken cognizance for the offences under Sections 138 & 142 of Negotiable Instruments Act, 1881 (for short, "NI Act") by Judicial Magistrate of First Class-cum-Spl. Mobile Magistrate, SPSR Nellore.

2. The respondent/complainant filed a private complaint alleging that the complainant and accused entered into an undertaking dated 03.06.2009 whereby the accused has to supply 700 KL of bio-diesel worth Rs.2,10,00,000/-. The accused received the said amount from the complainant company but supplied only 611.70 KL of bio-diesel, but could not supply the remaining 88.30 KL worth Rs.26,49,000/-. Hence, the accused issued a cheque bearing No.250650, dated 03.06.2009 for Rs.26,49,000/- drawn on State Bank of India, Lallacheruvu Branch, Rajahmundry in favour of complainant company in discharge of his legal liability. The complainant company presented the said cheque on 22.10.2009 in the Axis Bank, Nellore for collection, but the cheque was returned dishonoured by the State Bank of India, Lallacheruvu, Rajahmundry with the endorsement "funds insufficient". The complainant received the said information on 26.10.2009 and then got issued the statutory notice to

the accused on 12.11.2009 and the same was returned to the complainant on 05.12.2009 as 'un-served'. According to the complainant, he has to file complaint within 45 days from 05.12.2009 i.e., on or before 20.01.2010, but he filed complaint on 30.01.2010. Hence, the complainant filed a delay condonation petition in Crl.M.P.No.596 of 2010 under Section 142(b) of N.I Act to condone the delay and the said petition appears to have been allowed by the trial Court and a complaint was taken cognizance.

Hence the instant petition.

3. Heard learned counsel for petitioner Sri Srinivas Kapatia and learned counsel for respondent No.2/defacto complainant Sri Dammalapati Srinivas.

4. The first and foremost contention of learned counsel for petitioner is that since the complaint petition was filed with delay, the trial Court instead of directly allowing the petition, ought to have afforded notice to the petitioner/accused and after receiving counter ought to have decided the petition on merits. Since the trial Court allowed the petition straightaway, the petitioner/accused lost valuable right to oppose the delay petition. Therefore, the cognizance of the complaint is vitiated by law. He placed reliance on a decision in *Annapureddy Srinivasa Reddy vs. State of Andhra Pradesh and another*¹ to contend that notice is must in delay condoning petition.

¹ 2019(1) ALD (Crl.) 812

(a) Learned counsel also raised several other grounds and would contend that the complaint is not maintainable.

5. *Per contra*, learned counsel for respondent No.2 would contend that the trial Court has power to condone the delay without issuing notice to the accused as the trial Court has discretion to condone the delay and proviso to Section 142(b) of NI Act did not specify issuance of notice to the accused. He also refuted the other grounds raised by the petitioner.

6. **The point for consideration is whether there are merits in the criminal petition to allow?**

7. I gave my anxious consideration to the above respective arguments. Section 142 (b) of NI Act deals with the period within which a complaint has to be filed. It reads thus:

142. (b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

3 [Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.].

8. From the above provision it is discernible that a complaint has to be filed within one month of the date on which cause of action has arisen under clause (c) of proviso of Sec.138 of NI Act. Be that it may, the proviso of sub section (b) says that if the complainant failed to file the complaint within the above period, power is vested in the

Court to take cognizance of the complaint, if the complainant satisfies the Court that he had sufficient cause for not making the complaint within such period. So, the complainant is obligated to show sufficient cause for not making the complaint within the period of limitation. If there is no sufficient cause to convince the Court, needless to say, the accused need not face prosecution. In that view, when the complainant failed to file complaint within the stipulated period, a right of discharge from the prosecution accrues to the accused. Therefore, before condoning the delay in filing the complaint, the Court has to afford notice to the accused to express his say and thereafter only shall pass a reasoned order on merits. In **Annapureddy Srinivasa Reddy's** case a learned Judge of High Court of Judicature at Hyderabad for the State of Telangana and the state of Andhra Pradesh held thus:

xxxx The crux is whether it is filed within 30 days and if not, filed with any application to condone the delay in filing as contemplated by Section 142(b) of the Act. Needless to say if at all any application to condone the delay in filing made it is only after notice and hearing for condoning that delay to be decided and not without hearing for certain rights accrue to the accused after expiry to the statutory notice of one month from cause of action to file the complaint which cannot be interfered without opportunity to accused.

In **State of Maharashtra vs. Sharadchandra Vinayak Dongre and others**², Supreme Court observed thus:

9. Since the Chief Judicial Magistrate condoned the delay for launching the prosecution, without notice to the respondents and without affording any opportunity to the respondents to have their say, the case deserves to be remitted to the Chief Judicial

² AIR 1995 SC 231

Magistrate for deciding the application filed by the prosecution seeking condonation of delay, if any, afresh in accordance with law after hearing both the parties. It is after the decision of the application for condonation of delay that the Chief Judicial Magistrate shall proceed further in the matter.

9. When the case on hand is scrutinized in the light of above jurisprudence, in the instant case Crl.M.P.No.596 of 2010 was filed by the respondent/complainant to condone the delay on the ground that the petitioner/complainant suffered with serious ill-health i.e., viral hepatitis fever and bed ridden and therefore he could not file the complaint within time. Be that it may, the trial Court, it appears, did not order notice to the petitioner/accused in the said criminal petition and allowed the same. Therefore, taking cognizance of the complaint is vitiated in view of the said error in law.

10. The other arguments put forth by the petitioner against the maintainability of the complaint need not be discussed at this stage in view of holding that complaint is not maintainable without serving notice to the petitioner/accused in delay condoning petition.

11. Accordingly, this Criminal Petition is allowed and the cognizance order passed by the trial Court is set aside and case is remitted back to the trial Court with a direction to give notice to petitioner/accused in delay condoning petition filed by respondent/complainant and after receiving counter if any filed by petitioner/accused, hear both sides and pass an appropriate order in accordance with law on the delay condoning petition. Needless to emphasise that in case, the said petition is allowed and the complaint

is taken cognizance, the petitioner/accused shall have right to defend the case on all the pleas that are legally permissible to him.

As a sequel, interlocutory applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

28.01.2020
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