

Mamidi Prasanthi Vs State of Andhra Pradesh and Another

Court: Andhra Pradesh High Court

Date of Decision: June 14, 2013

Citation: (2013) 2 ALD(Cri) 699

Hon'ble Judges: B. Seshasayana Reddy, J

Bench: Single Bench

Advocate: N. Vijay, for the Appellant; K. Chidambaram for the Respondent No. 2, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B. Seshasayana Reddy, J.

This criminal petition has been taken out u/s 482 of Cr.P.C. by the accused in CC No. 573 of 2012 on the file

of the Judicial First Class Magistrate, Jangareddigudem, West Godavari District, to quash the proceeding therein.

Second respondent is the

complainant in CC No. 573 of 2012. He presented a complaint against the petitioner alleging inter alia that the petitioner borrowed an amount of

Rs. 2,25,000/- for her business on 9.8.2009 promising to repay the same at 24% interest Subsequently, the petitioner issued a cheque bearing No.

119995 dated 4.5.2011 for Rs. 2,00,000/- towards part payment of the amount due to him. He presented the cheque and the said cheque came

to be bounced on the ground of ""Closure of the Account"" He approached the petitioner and informed her about the return of cheque. The

petitioner requested him to present the cheque once again for collection. Accordingly, he represented the cheque on 2.7.2011 for collection

through Costal Local Area Bank Limited, Jangareddigudem. The cheque came to be returned on 6.7.2011 for the reason ""Account number

required"". He issued notice to the petitioner calling upon her to pay the cheque amount. The petitioner received the said notice on 17.8.2011 and

issued a reply on 24.8.2011 disputing her liability. Hence, he filed a complaint against the petitioner for the offence u/s 138 read with 142 of the

Negotiable Instruments Act, 1881. The complaint filed by him has been taken on file by the Judicial First Class Magistrate, Jangareddigudem as

CC No. 573 of 2012. Hence, this petition by the accused in CC No. 573 of 2012 on the file of the Judicial First Class Magistrate,

Jangareddigudem, to quash the proceeding therein.

2. Heard learned Counsel appearing for the petitioner and learned Counsel appearing for the first respondent-State.

3. It is contended by the learned Counsel appearing for the petitioner that the second respondent-complainant presented the cheque for

encashment on 9.5.2011 and the said cheque came to be bounced for the reason of ""Closure of Account"". Once the cheque came to be returned

for the reason of account being closed, question of re-presenting the selfsame cheque does not arise. In a way it is his contention that the cheque

came to be re-presented to overcome the period of limitation prescribed under the proviso to Section 138(b) of the Negotiable Instruments Act,

1881.

4. The factual aspect of the cheque being returned on 9.5.2011 on the ground of closure of account is not disputed by the Counsel appearing for

the second respondent-complainant. Once the cheque has been returned on the ground of closure of account, question of re-presenting the cheque

does not arise. Admittedly, statutory notice calling upon the petitioner to pay the cheque amount has been issued after expiry of the period

provided u/s 138(b) of the Negotiable Instruments Act, 1881. Therefore, the complaint filed by the second respondent-complainant before the

Judicial First Class Magistrate, Jangareddigudem, apparently barred by limitation. In that view of the matter, I find that the continuance of the

proceedings against the petitioner in CC No. 573 of 2012 on the file of the Judicial First Class Magistrate, Jangareddigudem, amounts to abuse of

process of Court. Accordingly, the criminal petition is allowed, quashing the proceedings in CC No. 573 of 2012 on the file of the Judicial First

Class Magistrate, Jangareddigudem. As sequel to it, miscellaneous petitions, if any, pending, shall stand dismissed.