

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.07.2015

Delivered on : 16.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.17095 of 2015

and

M.P.Nos.1,2 of 2015

K.Sunanda

...Petitioner

Versus

Thirukumar

...Respondent

Criminal Original petition filed under Section 482 of the Criminal Procedure Code praying to call for the records and quash the complaint dated 15.04.2015 now pending on the file of the Judicial Magistrate, Tambaram in STC.No.2797 of 2015 against the petitioner.

For Petitioner : Mr.M.Aravind Subramaniam

O R D E R

This petition has been filed to quash the proceedings in STC.No.2797 of 2015 on the file of the learned Judicial Magistrate, Tambaram.

2. Heard the learned counsel for the petitioner and perused the materials placed on record.

3. The prosecution for offence under Section 138 of Negotiable Instruments Act is being challenged by the accused herein, on two short grounds:

- i. That the statutory notice issued by the complainant under Section 138 of Negotiable Instruments Act is an omnibus notice, which is invalid.
- ii. The entire amounts covering the alleged liability have been paid by the accused to the complainant.

4. It is the case of the complainant that the accused had borrowed a sum of Rs.18Lakhs and executed a promissory note dated 01.08.2013 in favour of the complainant. In discharge of the said debt, the accused gave the impugned cheque for Rs.18Lakhs, which when presented by the complainant was returned on 23.03.2015 and after issuing the statutory notice dated 30.03.2015, the complaint has been lodged.

5. As stated above, it is the contention of Mr.M.Aravind Subramaniam, learned counsel for the petitioner, that the statutory notice is an omnibus one and is therefore, void.

6. Therefore, this Court examined the statutory notice dated 30.03.2015 issued by the complainant, which reads as follows:

"... My client further states that since you have failed and neglected to pay even the interest and as my client could not meet you in person at Chennai, he presented the said Cheque on 16.03.2015 for clearance in my client's bank viz. Lakshmivilas Bank Ltd. West Tambaram Branch but the same was dishonoured and returned on 23.03.2015 with endorsements 'payment stopped' which was intimated to my client by your bankers on 24.03.2015 and thereby you have committed offences of cheating punishable under Sec. 420 and under Sec.138 of Negotiable Instruments Act.

Now you are liable to pay my client Rs.18,00,000/- towards the principal and Rs.7,20,000/- towards the interest calculated at the rate of 24%p.a. on Rs.18,00,000/- from 01.08.2013 upto March 2015 aggregating in all Rs.25,20,000/- which sum still unpaid by you.

Therefore I hereby call upon you to pay my client the said sum of Rs.25,20,000/- within 15 days from the date of receipt of this notice failing which my client will be constrained to take appropriate legal proceedings both civil and criminal for the recovery of the said amount holding you liable for all costs and expenses incidental thereto."

7. The learned counsel for the petitioner relied upon a Judgment of the Delhi High Court in Crl.M.C.Nos.2224 and 2225 of 2009 dated 18.01.2010 [M/s.Alliance Infrastructure Project Pvt. Ltd. and Ors Vs Vinay Mittal and another] in support of his contention.

8. In the considered opinion of this Court, the statutory notice, the contents of which has been extracted above, cannot be said to be an omnibus one. The complainant has clearly given the description of the cheque, the amount involved in the cheque, the date on which it was presented and the reason for dishonour. There

can never be any confusion in the mind of an ordinary prudent accused as to what his liability under Section 138 of Negotiable Instruments Act would be. Had the accused paid Rs.18Lakhs after receipt of the notice within the stipulated period, then no prosecution under Section 138 of Negotiable Instruments Act could have been launched, though the complainant can proceed against the accused for the interest payable before the civil forum. Therefore, the first ground urged by the learned counsel for the petitioner is untenable.

9. As regards the second ground that the amounts have been paid, it is a question of fact, which cannot be determined in a quash proceedings under Section 482 Cr.P.C as held by the Supreme Court in S.Krishnamurthy Vs Chellammal [2015] 4 SCC 371.

10. In the result, this petition is devoid of merits and stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate,
Tambaram.

1 CC to Mr.M.Aravind Subramaniam, Advocate SR.No. 36126

CRL.O.P.No.17095 of 2015

RJ (CO)
PSI (29.07.2015)

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