

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2015

CORAM

The Hon'ble Mr. Justice R.S.Ramanathan

CrI.O.P.No.20188 of 2009
and
M.P.No.1 of 2009

1. M/s.Pavai Agro Service,
rep. By its Managing Partner,
V.Kuppusamy
 2. V.Kuppusamy,
Managing Partner of
M/s.Pavai Agro Service
- vs.
- P.R.Subbaiah
- ...Petitioners
...Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for records relating to the proceedings in C.C.No.216 of 2009, on the file of Judicial Magistrate No.VI, Coimbatore and to quash the same.

For Petitioner : Mr.C.Prakasam

O R D E R

The accused in C.C.No.216 of 2009 on the file of the Judicial Magistrate No.VI, Coimbatore are the petitioners. The respondent filed a complaint u/s.138 Negotiable Instruments Act and this petition is to quash the said complaint.

2. It is submitted by the learned counsel for the petitioners that even according to the complaint, the cheque was presented for collection on 01.02.2008 and the same was returned on 09.02.2008 with the endorsement "funds insufficient" and the statutory notice was issued on 01.05.2008 and therefore, the statutory notice was not issued in accordance with the provisions of Section 138 of the Negotiable Instruments Act and the complaint is liable to be dismissed. She also submitted that the cheque was stolen from the custody of the petitioners/accused and a complaint was given before the Belgham police and a case has been registered in Crime No.108 of 2008 and that would also prove

that no amount was payable by the petitioners. The learned counsel therefore submitted that on these grounds, the petition has to be allowed and the complaint in C.C.No.216 of 2009 on the file of the Judicial Magistrate No.VI, Coimbatore is liable to be dismissed.

3. I am unable to accept the contention of the learned counsel for the petitioner. A reading of the complaint makes it clear that the cheque initially was presented for collection on 01.02.2008 and was returned with the memo on 09.02.08 and at the request of the petitioners/accused, the cheque was represented on 25.03.2008 and it was returned with the memo dated 12.04.2008 with the very same endorsement. Thereafter, statutory notice was issued on 01.05.2008. Hence, the statutory notice was issued within the prescribed time as per the Section 138 of the Negotiable Instruments Act. Whether the cheque was stolen by the complainant or not, is a matter to be decided during trial and this court cannot go into that issue.

4. Hence no case has been made for quashing the complaint. In the result, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

vrc

To

The Judicial Magistrate No.VI,
Coimbatore.

सत्यमेव जयते

1 cc to M/s.C. Prakasam, Advocate, Sr. 26486

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MP (CO)
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