IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 05.02.2015

CORAM

THE HONOURABLE MR.JUSTICE R.KARUPPIAH

Crl.O.P. No.5507 of 2010
And
M.P.No. 1 of 2010

R.Kamal Jain .. Petitioner

Vs.

Axis Bank Limited
(Erswhile UTI Bank Ltd.,)
Chittoor Branch, rep. By its Assistant
Vice President A.V.Ajay Babu .. Respondent

Prayer:- Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records in C.C.No. 34 of 2009 pending on the file of Judicial Magistrate No.IV, Vellore and quash the same.

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For Petitioner : Mr.E.Kannadasan
For Respondent : Mr.Mothilal

O R D E R

The petitioner filed this Criminal Original Petition to quash the private complaint filed by the respondent in C.C.No. 34 of 2009 on the file of the Judicial Magistrate No.IV, Vellore.

2. Heard the learned counsel for the petitioner and respondent and perused the entire materials available on record.

3. Brief facts necessary to decide the petition are as follows:-

The respondent herein filed a private complaint under Section 138 of the Negotiable Instrument Act and the Magistrate has taken on file as C.C.No.34 of 2009. In the above said complaint, it is stated that the respondent herein has sanctioned a limit of Rs.5,00,000/- initially which was subsequently enhanced to Rs.25,00,000/- under the facility of factoring of domestic receivable from Bharathi Teletech Ltd., which was guaranteed by the personal guarantee of the petitioner. The petitioner also executed necessary documents including the master letter dated 13.01.2007 undertaking for PSBC dated 18.01.2007 in favour of the respondent, acknowledgment of terms and conditions of the sanction, letter of acknowledgment of debt dated 02.04.2007 for consideration of Rs.25,00,000/- promising to repay the same on demand with interest. The petitioner defaulted to pay the balance amount of Rs.18,80,104/- as on 31.10.2008 inspite of demand and notices by the complainant on 16.10.2008 and 03.11.2008. It is also stated in the complaint that this petitioner had issued a cheque bearing No. 116143 dated 12.12.2008 drawn on ICICI Bank Ltd., Vellore in favour of the complainant Bank for Rs.16,60,000/- being part payment of the amount payable by him. It is also averred in the complaint that the respondent herein sent the above said cheque for collection to their Bank at Vellore and they had presented the cheque to ICICI Bank Ltd., Vellore for payment on 17.12.2008. But the above said cheque was returned to the complainant on 17.12.2008 itself with an endorsement that the cheque was returned for reasons "payment stopped by drawer". Therefore, the respondent herein issued a registered notice on 30.12.2008 under Section 138 of the Negotiable Instrument Act calling upon the petitioner for payment of the said amount of Rs.16,60,000/- of the dishonoured cheque which was received by the respondent on 03.01.2009 as per Acknowledgment Card.

According to the respondent, the petitioner had issued the above said cheque knowing fully well that there is no sufficient funds in his account and also instructed his Bank to stop payment of the above cheque, thereby dishonoured the cheque with malafide intention to defraud the respondent and therefore filed the above said private complaint to punish the petitioner under Section 138 of the Negotiable Instrument Act and it is pending before Magistrate Court.

4. The petitioner herein filed this Criminal Original Petition to quash the above said private complaint filed by the respondent herein. The main contention of the petitioner is that the respondent has sent a defective legal notice dated 13.12.2008 since the above said notice issued without mentioning the cheque number, drawn Bank etc., particulars and therefore, the above said notice was not in proper manner, but the trial Court has failed to consider the above said fact. Further the contention of the petitioner is that he already intimated about the stop payment even prior to demand notice of the respondent as early as 17.09.2008 and the respondent made a demand notice on 16.10.2008 demanding him to pay Rs.20,00,000/- with interest, even after the receipt of stop payment intimation. This fact also not considered by the trial Court. Further the respondent herein given two different version in their two notices served to the petitioner. Further, the trial Court has failed to peruse the reply notice sent by the petitioner on 16.01.2009 wherein denied the contentions of the respondent and also pointed out the defective notice sent by the respondent before taken on file by the trial Court. Therefore, the learned counsel appearing for the petitioner prayed for to quash the above said proceedings.

5. Per contra, the learned counsel appearing for the respondent fairly conceeded that in the legal notice issued under Section 138 of the Negotiable Instrument Act on 13.12.2008, the number of cheque and also the details of Bank not mentioned as pointed out by the petitioner. But the learned counsel pointed out that in the above said notice date of cheque mentioned as 12.12.2008 and the amount of consideration also mentioned as Rs.16,60,000/- and therefore, only on the ground of omission to mention the cheque number, details of Bank, etc, the complaint filed by the respondent cannot be quashed. But the learned counsel appearing for respondent has not pointed out any acceptable explanation for suppression of earlier letter issued by the petitioner to respondent.

6. On perusal of the records reveal that on 17.09.2008 the petitioner herein sent a letter to the respondent and the details of the letter is extracted as follows:-

> "I have handed over the four blank cheques to the Chittoor Branch of your bank bearing Nos. 116133; 116142; 116143 and 116144 of ICICI Bank Ltd., on 18.01.2007 and the same has been acknowledged by the branch. I request you to return the four cheques to me. I have intimated the ICICI Bank stop payments in case of cheques are to be filled up unauthorisedly and presented out of time."

7. Long after the above said notice, on 16.10.2008, the respondent herein sent a letter to the petitioner wherein it is stated as follows:-

> "We refer to Master letter ref No.-NIL- dated 13.01.2007 issued by Bharti Teletech Limited informing your firm for the channel finance facility under the Bharti Teletech Factoring of Receivables Scheme and the debt acknoledgement letter dated 02.04.2007 provided by your firm towards Axis Bank Ltd., (erstwhile UTI Bank Ltd.,) wherein you have accepted your liability.
>
> The operation of your captioned account has been irregular and we state that despite our rigorous follow up and reminders, you have failed and neglected and/or intentionally avoided to regularize the operation of the said Account under the aforesaid facility.
>
> We state that the captioned account under the aforesaid facility has been overdrawn and your outstanding to the Bank as on 16.10.2008 stands at

Rs.19,36,833/- (Rupees Ninteen Lakh Thirty Six Thousand Eight Hundred Three only) plus interest and penal interest till the date of payment.

In the circumstances, we hereby call upon you to pay the said sum of Rs.20,00,000/- along with the interest thereof at the contractual rate along with penal interest, within seven days from the date of the receipt of this letter.

You are once against requested to co-operate with the Bank and not to push the Bank to a situation whereby the Bank may take legal steps to recover the amounts."

8. On 13.12.2008, the respondent herein sent a legal notice under Section 138 of the Negotiable Instrument Act wherein it is stated as follows:-

"We, the AXIS Bank Ltd., a Scheduled Commercial Bank having its Registered Office at Trishul, 3rd Floor, Law Garden, Ellisbridge, Ahmedabad 380 009 and its one of the branch office at 18-1024, Sindu Towers, P.H.Road, Chittoor have to address you as under:-

We have to state that at your Guarantor's request, we had granted a credit facility term loan to you vide our sanction letter No. CR?SPG/3894 dated 09.07.2008 under our Channel Finance (CCCFD) Scheme for Rs.20,00,000/- repayable within 30 days. That you have availed of the aforesaid loan facility and have admitted and acknowledged your liability to make the payments to us.

We further have to state that the 1 (Number of Ch.) cheques issued by you in our favour 1) dated 12.12.2008 for the amount of Rs.16,60,000/- in consideration towards the part payment of the above liability was presented for payment by us on 17.12.2008 were returned unpaid on 18.12.2008 for the reason Payment stopped by Drawer.

We say that you had issued the aforesaid cheque with a malafide and dishonest intention knowing fully well that the said cheque will not be honoured on its presentation and for which you are liable to be prosecuted and punished for the offences committed under

Section 138 of the Negotiable Instruments Act 1881 read with Section 420 of the Indian Penal Code.

In the circumstances we hereby call upon you to pay to us the said sum of Rs.16,60,000/- being the aggregate amount of all the dishonoured cheques within 15 days from the date of the receipt of this notice by you failing which we shall be constrained to adopt such proceeding including proceeding under Section 138 of the Negotiable Instrument Act and under Section 420 of IPC entirely at your risk as to cost and consequences thereof which please note.

This notice is without prejudice to our rights to recover the balance amount due to us against the said loan / facility for which we reserve our rights to initiate separate civil action against you and your guarantor which please note."

9. On receipt of the above said legal notice issued by the respondent on 13.12.2008, the petitioner herein sent a reply notice on 16.01.2009 wherein it is stated as follows:-

"Your notice dated 30.12.2008 issued to our client Mrs.Pooja Mobiles having its office at Door No.52, 2nd Floor, Sarathi Mansion, Vellore - 632 004, Tamil Nadu has been placed into our hands with due instructions thereto reply as follows:-

That our client states that it is true that your bank is a scheduled commercial bank having its registered office at Trishul 3rd Floor, Law Garden, Ellisbridge Ahmedabad 380009 and its one of the branch office is at 18-1024 Sindu Tower, P.H.Road, Chitoor and it is also true that at our client's guarantor's request you leave granted a credit facility / term loan to our client vide your sanction letter No. CR/SPG/3894 dated 09.07.2008 under your channel finance (CCCFD) scheme for Rs.20,00,000/- repayable within 30 days and our client availed of the above said loan falling and has admitted and acknowledge his liability to made the payment to you.

That our clients state that it is false to state that our client has issued cheques in favour of Axis Bank limited dated 12.12.2008 for the amount of Rs.16,60,000/- in consideration towards the part payment of the above liability. In this regard our client would like to submit that your notice is lack of particulars with regard to the numbers of cheques and in favour of which bank it was drawn and how many cheques that were alleged it has been issued by our client and was presented for collection by you and for which amount each cheque was filled up with and presented for collection and also on which bank you have presented the cheques for collection and therefore your notice is lack of all particulars bound to be mentioned so as to avail our clients to know the particulars as envisaged under Section 138 Negotiable Instrument Act of 1881.

That our client states that in the above aspect our client would like to state further that he has already sent a letter dated 07.11.2008 intimating the fact that the four blank cheques that were collected by your bank from our client at the time availing loan amount that were drawn on ICICI Bank, Vellore, Nos. being 116133, 116142, 116144, 116143, and also has intimated in the same letter but since differences arrows between him and Barathi Telelink Ltd., he has given a letter your to the bank on 17.09.2008 itself to stop the payment of the above said cheques to the ICICI Bank Limited, Vellore.

That our clients states that therefore he was not issued any cheque or cheques as you mentioned in your notice dated 30.12.2008 with a malafide and dishonour intention knowing fully well that cheques will not be honoured on its presentation and therefore, he cannot be held liable to be prosecuted and punished for the offence committed under Section 138 of the Negotiable Instrument Act and read with 420 IPC and our client is not legally bound to pay your bank Rs.16,60,000/- being the agricated amount of all the dishonoured cheques and you are put to strict proof of the same.

Our clients hereby calls upon you not to proceed with the dishonoured cheques further as mentioned in your notice and inspite of it if you proceed further it will be at your own risk and costs.”

10. After receipt of the above said notice, the respondent herein filed the above said private complaint on 12.02.2009. As rightly pointed out by the learned counsel appearing for the petitioner on 17.09.2008 itself, the petitioner has sent a letter by stating that the respondent herein obtained four blank cheques bearing Nos. 116133, 116142, 116143 and 116144 of ICICI Bank Limited on 18.01.2007. For the above said notice, the respondent herein has not sent any reply to the petitioner.

11. Long after the above said notice, the respondent herein sent a letter on 16.10.2008. In the above said notice, it is not stated that the petitioner has not issued any notice as stated in the letter dated 17.09.2008. Further in the above said notice, it is not denied the contentions in the above said notice issued by the petitioner. In the above said notice, it is stated only as if the petitioner's outstanding to the Bank as on 16.10.2008 stands at Rs.19,36,833/- with interest and penal interest till date of payment and also totally the respondent claimed Rs. 20,00,000/- along with interest.

12. As rightly pointed out by the learned counsel for the petitioner, in the above said notice, dated 16.10.2008 it is not stated as the petitioner has not given four blank cheques as stated in the letter dated 17.09.2008. Further, the respondent has not denied the receipt of the letter dated 17.09.2008.

13. In the above said circumstances, the respondent herein sent a legal notice under Section 138 of the Negotiable Instrument Act on 13.12.2008. In the above said notice, admittedly the respondent has not given the particulars of cheque number and the details of Bank. Further in the above said notice not stated about the letter addressed by the petitioner on 17.09.2008. On the side of the respondent has not at all stated any reason why the above said material particulars like the cheque number, Bank particulars etc, are not given in the legal notice.

14. The petitioner herein sent a detailed reply on 16.01.2009 wherein specifically stated as the legal notice issued on 30.12.2008 is lack of particulars with regard to the number of cheque and the details of bank and therefore, the above said notices issued with a malafide and dishonoured intention. It is also averred that for the above said reasons, the petitioner cannot be held liable to be prosecuted and punished for the offences committed under Section 138

of the Negotiable Instrument Act. Inspite of the above said detailed reply given by the petitioner, the respondent herein has suppressed the above said reply notice dated 16.01.2008 in the private complaint filed by the respondent. Further, the respondent herein has not denied the contention raised by the petitioner in the reply notice. Before this Court also, the respondent herein has not given any acceptable reasons for suppression of material particulars (ie) cheque number, Bank particulars, etc.

15. As rightly pointed out by the learned counsel appearing for the petitioner, for making out a case under Section 138 of the Negotiable Instrument Act, the requirement of legal notice in writing with correct particulars are necessary. The relevant provision is extract as hereunder:-

> "138. Dishonour of cheque for insufficiency, etc., of funds in the account.- where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for 19 [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—
>
> (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
> (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque,[20] [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice."

16. In the instant case, the main contention of the petitioner is that even on 18.01.2007, the petitioner handedover four blank cheques bearing Nos. 116133, 116142, 116143 and 116144 of ICICI Bank Ltd., and the petitioner herein sent a letter to the respondent on 17.09.2008 itself wherein clearly stated as the above said cheques have been issued as blank cheques on 18.01.2007. Further in the said letter, the petitioner requested to return all the four blank cheques. Since the petitioner already intimated to ICICI Bank for stop payment in case of cheques are to be filled up unauthorisedly and presented out of time. From the above said averments in the letter revealed that there are four cheques including the cheque relating to the present (ie) cheque No. 116143 also handed over to the respondent on 18.01.2007 itself as blank cheques and the petitioner herein specifically requested the respondent to return all the four blank cheques and also direct the respondent not to filled up unauthorisedly and also not to present the cheques for collection. The respondent herein has not sent any reply for the above said letter. As already discussed in the legal notice issued by the respondent shows that the respondent has suppressed the above said material facts. The legal notice issued by the respondent is not valid since the respondent herein has not complied with the conditions prescribed in the provision under Section 138 of the Negotiable Instruments Act as rightly contented by the learned counsel appearing for the petitioner.

17. As discussed earlier, from the above said conduct of the respondent itself clearly shows that the alleged cheque bearing No. 116143 not issued on the alleged date ie., 12.12.2008 but the petitioner handed over four blank cheques including cheque relied on by the respondent in the present case, bearing Nos. 116133, 116142, 116143 and 116144 of ICICI Bank Limited on 18.01.2007 itself as stated in the earlier notice dated 17.09.2008. Therefore, the respondent herein not entitled to any relief as claimed in the private complaint filed by the respondent on the basis of fraudulent document and also want of proper legal notice as rightly pointed out by the learned counsel appearing for the petitioner.

18. In view of the above said fact, I am of the view that the private complaint filed by the respondent in C.C.No. 34 of 2009 pending on the file of Judicial Magistrate No.IV, is liable to be quashed.

19. In the result, the proceedings in C.C.No. 34 of 2009 pending on the file of Judicial Magistrate No.IV, Vellore is quashed and the Criminal Original Petition is ordered accordingly. Consequently, connected Miscellaneous Petition is closed.

vsg

-s/d-
Assistant Registrar(J)
Dt:2/3/2015

True Copy

Sub-Assistant Registrar

TO

1. The Judicial Magistrate No.IV,
   Vellore, Vellore District.

2. -do- thro' The Chief Judicial Magistrate,'
   Vellore.

+ 1 cc to Mr.E.Kannadasan, Advocate SR 6164

+ 1 cc to Mr.S.Mothilal, Advocate SR 6580

gj(co)
prk5/3

Crl.O.P. No.5507 of 2010