

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2015

CORAM

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

Crl.O.P.No.23865 of 2009

and

M.P.No.1 of 2009

B.M.Ramesh Kumar

...Petitioner

vs.

E.Kumar

Managing Partner,

M/s.Neela Tyres,

rep. by his Power of Attorney Holder

P.C.Selvendran.

...Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for records relating to the case in C.C.No.237 of 2009, on the file of the Judicial Magistrate No.V, Salem, and to quash the same.

For Petitioner : Mr.V.Sairam

For Respondent : Mr.B.Vasudevan

O R D E R

The petitioner herein is the accused in C.C.No.237 of 2009, on the file of the Judicial Magistrate No.V, Salem. The respondent initiated prosecution against the petitioner and other accused, for offence under Section 138 of Negotiable Instruments Act, 1881, (N.I.Act) stating that one Madheswaran @ Madhu, the Proprietor of Palaniandavar Transports, Attur, had purchased Tyres from the respondent on 03.06.2008 and 23.08.2008, for a sum of Rs.23,800/- and Rs.65,000/- respectively, for which, the first accused handed over a cheque for a sum of Rs.1,00,000/- drawn on State Bank of Hyderabad, bearing No.731651, signed by the petitioner on behalf of the said Madheswaran @ Madhu, in the name of the first accused, and the first accused endorsed the cheque in favour of the respondent. When the cheque was presented for collection, it was dishonoured on account of insufficient funds. Therefore, the respondent, after issuing statutory notice to the first accused and second accused/petitioner, filed the complaint against them, and this Petition is filed to quash the said complaint insofar as the petitioner is concerned.

2. It is submitted by the learned counsel appearing for the petitioner that, admittedly, the said Madheswaran @ Madhu, owed Rs.88,800/- to the respondent, and the cheque was issued towards that amount. The respondent also admitted in his notice that though the cheque was issued for a sum of Rs.1,00,000/-, he would refund the balance sum of Rs.11,200/-, as he was entitled to claim only Rs.88,800/- and he demanded the petitioner and the first accused through his notice dated 29.04.2009, to pay the amount due to him within 15 days from the date of receipt of the notice. The learned counsel, therefore, submitted that, when the notice was issued demanding sum of Rs.88,800/-, which was the amount due to the respondent, and the cheque was issued for Rs.1,00,000/- there was no proper notice, and as per Section 138 N.I.Act, demand must be in respect of the cheque amount. Admittedly, in this case, demand was in respect of Rs.88,800/-, which is less than the cheque amount, and therefore, there was no proper demand. The learned counsel also relied upon the judgments reported in i) (2000) S.C.C. (Cri.) 414 in re (Suman Sethi Vs. Ajay K. Churiwal and another), ii) (2003) S.C.C. (Cri) 2002 in re (K.R.Indira Vs. Dr.G.Adinarayana) and (2001) 1 C.T.C. 616 in re (Ishar Alloy Steels Ltd., Vs. Jayaswals NECO Ltd.) in support of his contention.

3. It is submitted by the learned counsel for the respondent that, as per explanation to Section 138 of N.I.Act, "debt or or other liability, means a legally enforceable debt, or other liability. According to the respondent, the amount due from the accused was only Rs.88,800/-, and though the cheque was issued for Rs.1,00,000/-, the respondent demanded the amount due to him, which was legally enforceable, and therefore, notice was issued as per the provisions of Section 138 N.I.Act.

4. I am unable to accept the contentions of the learned counsel for the respondent. In the judgment reported in (2008) 1 S.C.C. 703 in re (Rahul Builders Vs. Arihant Fertilizers and Chemicals and another), the Hon'ble Supreme Court considered the judgments referred to above, viz., the judgment reported in (2000) S.C.C. (Cri.) 414 in re (Suman Sethi Vs. Ajay K. Churiwal and another), (2003) S.C.C. (Cri) 2002 (K.R.Indira Vs. Dr.G.Adinarayana) and held that, when the demand was not for the amount mentioned in the cheque, there was no proper compliance of provisions of Section 138 of N.I. Act.

5. In the judgement reported in (2003) S.C.C. (Cri) 2002 (K.R.Indira Vs. Dr.G.Adinarayana), it was held that what was necessary was of making a demand for the amount covered by the bounced cheque, which was conspicuously absent in the notice issued in this case and the notice was found to be defective, as it did not specifically mention the cheque amount. In the present case, in the notice, it has been specifically admitted by the respondent that the amount due to him was only Rs.88,800/-, and the cheque was issued for

Rs.1,00,000/- and he was prepared to refund to Rs.11,200/- if the cheque amount was paid. The respondent also demanded the amount due to him, which means Rs.88,800/- and not Rs.1,00,000/-

6. Therefore, as per the judgment rendered by the Hon'ble Supreme Court in Rahul Builders's case, referred to supra, when the demand was not in respect of the cheque amount, but for a lesser amount, there was no proper compliance of the provisions of Section 138 of N.I.Act, and on that ground the Petition is liable to be allowed. Accordingly, the Criminal Original Petition is allowed, complaint in C.C.No.237 of 2009, on the file of the Judicial Magistrate No.V, Salem, stands quashed in respect of the petitioner herein alone. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

The Judicial Magistrate No.V, Salem,

1 cc to Mr.B.Vasudevan , Advocate Sr.No.28679

1 cc to Mr.V.Sairam , Advocate Sr.No.28691

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