

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Delivered On : 02 .06.2015
Reserved On : 30.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.OP No.9399 of 2015
and
M.P.Nos.1 and 2 of 2015

R.Sekar

... Petitioner/Accused

Vs

M/s.Beiersdorf India Pvt. Ltd.,
Regd. Office at Rua De Ouram,
Panaji, Goa-403 001.
Branch Office: P.L.Agencies,
SP 103, Ambattur Industrial Estate,
Ambattur, Chennai - 600 058.
Rep. by its Power of Attorney Agent
Mr.S.Senthil Murugan

... Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482
Cr.P.C., to call for the records pertaining to the complaint in
C.C.No.285 of 2014 on the file of the Judicial Magistrate III,
Salem and quash the same.

For Petitioner : Mr.C.K.M.Appaji

ORDER

Heard the learned counsel for the petitioner/accused.

2. This petition is filed to quash the complaint in C.C.No.285
of 2014 on the file of the Judicial Magistrate III, Salem.

3. The accused is the petitioner before this Court. For the
sake of convenience, the parties will be referred to as the
complainant and the accused.

4. The complainant is running a business in the name and style
of M/s.Arul Sakthi Agencies and on the orders placed by the
accused, the complainant supplied goods vide two invoices dated
22.06.2013 and 29.06.2013 for Rs.3,09,989/- to the accused, towards
which, the accused gave two cheques for Rs.1,63,078/- dated
11.01.2014 and for Rs.1,46,911/- dated 23.01.2014. When the

complainant presented both the cheques, they were dishonored. The complainant issued statutory notice dated 10.04.2013 and since the accused did not repay the amount, launched the prosecution under Section 138 of the Negotiable Instruments Act against the accused.

5. Learned counsel for the accused submits that even according to the complainant, the statutory notice was not served on the accused and was returned with the endorsement 'no such address' and therefore, there is no cause of action for the prosecution to proceed further. The learned counsel for the accused also pointed out this Court that the complainant has not stated as to when the unserved notice was returned to him.

6. This Court carefully perused the complaint. In paragraph No.6 of the complaint, it is stated as follows:

"6.The complainant submits that thereafter they made a demand by way of Legal Notice dated 10.04.2014 and it has been returned and the complaint is made within the stipulated time provided under the amended provisions of the Negotiable Instruments Act and hence within time."

7. In the list of documents given in the complaint, the complainant has enclosed the returned cover. Thus the returned cover is very much part and parcel of the complaint and is available before the trial Court. Just because the complainant has not stated in the complaint the date on which the returned cover reached his hands, the prosecution cannot be quashed. The complainant will be entitled to give evidence on this fact whilst in the witness box. Limitation is a question of fact to be decided by the trial Court and not by this Court under Section 482 Cr.P.C.

In the result, this petition is devoid of merits and the same stand dismissed. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsm
To

The Judicial Magistrate III, Salem.

CrI.OP No.9399 of 2015
and M.P.Nos.1 & 2 of 2015

VGI (CO)
CA(11/06/2015)