

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2015

CORAM

THE HON'BLE MR. JUSTICE R.S.RAMANATHAN

Cr1.O.P.No.15813 of 2010
and
M.P.Nos.1 and 2 of 2010

K.Nageswararao

...Petitioner

vs.

Apollo Sindhoori Capital Investments Ltd.,
"Ali Towers" III Floor,
rep by its Manager-Inspection
L.R.Murali Krishnan
22 Greams Road, Chennai - 600 006.

...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. 7960 of 2006, on the file of XIV Metropolitan Magistrate, Egmore, Chennai, and to quash the same.

For Petitioner : Mr.V.Ayyadurai

For Respondent : Mr.Shivathanan Mohan Sanjay
for Mr.Ramasubramaniam Associates

O R D E R

The petitioner herein is the accused in C.C.No.7960 of 2006, on the file of XIV Metropolitan Magistrate, Egmore, Chennai, and this Petition is filed to quash the said case.

2. The respondent/complainant filed the abovesaid case against the petitioner, for offence under Section 138 of Negotiable Instruments Act, 1881 (N.I. Act) stating that the petitioner/accused issued a cheque for a sum of Rs.30,00,000/-, and the same was dishonoured when presented and the intimation was received on 16.06.2006. Thereafter, the respondent/complainant sold the shares of the petitioner, and adjusted the sale proceeds towards the amount payable by the petitioner, and the petitioner was liable to pay Rs.8,82,368.85. Therefore, the respondent issued notice calling upon the petitioner to pay the said sum of Rs.8,82,368.85. As the petitioner did not comply with the said demand, case was filed against him.

3. The learned counsel appearing for the petitioner has submitted that, as per Section 138 N.I.Act, demand has to be made in respect of the cheque amount. In this case, admittedly, the cheque amount was Rs.30,00,000/-, and demand was for a sum of Rs.8,82,368.85, and therefore, there is no valid compliance of provisions of Section 138. The learned counsel also relied upon the judgment reported in (2000) S.C.C. (Cri.) 414 in re (Suman Sethi Vs. Ajay K. Churiwal and another in support of his contention.

4. The learned counsel appearing for the respondent has submitted that, even though the cheque was issued for Rs.30,00,000/-, the respondent utilized some amount by selling the shares of the petitioner, and the petitioner was liable to pay only Rs.8,82,368.85, and therefore, demand was made. The learned counsel further submitted that, as per Section 138 of N.I.Act, the drawer of the cheque should be called upon to pay the amount due under the transaction, and as per the transaction entered into between the petitioner and the respondent, the petitioner was liable to pay only Rs.8,82,368.85, hence, the said amount was demanded by the respondent. The learned counsel, therefore, submitted that there was sufficient compliance of provisions of Section 138 N.I. Act, and hence, the complaint cannot be quashed.

5. I am unable to accept the contentions of the learned counsel for the respondent.

6. In the judgment reported in (2000) S.C.C. (Cri.) 414 (supra) similar question was considered by the Hon'ble Supreme Court, and in that case, notice was issued by the complainant calling upon the accused to pay Rs.20,00,000/-, being the cheque amount along with incidental charges of Rs.1,500/- spent on the cheque on its presentation and also Rs.340/- as notice charges, and that was challenged by the accused, stating that the complainant has demanded the amount, which is higher than the amount due to him, as per the cheque, and therefore, there was no proper notice and that was negatived by the Hon'ble Supreme Court holding that, in the notice, there was specific demand of the cheque amount, and in addition to the cheque amount, the complainant has asked for other charges, and those amounts were severable, and therefore, there was no illegality in the notice issued by the complainant, as the complainant has demanded the amount mentioned in the cheque.

7. In this case, it is submitted by the learned counsel appearing for the respondent that, though the cheque was issued for Rs.3,00,000/-, the respondent realized some amount payable by the petitioner by selling his shares, and the balance payable by the petitioner was only Rs.8,82,368.85, and as per Section 138 of N.I Act, there must be demand for the amount payable by the accused, and therefore, there is proper compliance. A reading of Section 138

N.I.Act makes it clear that demand should be for payment of the said amount of money due under the cheque, and proviso (b) to Section 138 reads as follows:-

"Provided that nothing contained in this Section shall apply unless --

a) the payee or 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, (withing thirty days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid."

8. In the judgment reported in (2000) S.C.C. (Cri.) 414 (supra), the words "said amount of money" was interpreted by the Hon'ble Supreme Court by stating that "said amount of money" means the cheque amount. Hence, the arguments of the learned counsel appearing for the respondent cannot be accepted. According to him, the amount payable under the cheque is to be from the amount payable under the transaction between the parties. But, as per Section 138 N.I. Act, there should be demand for the amount payable under the cheque and not towards the amount payable under the transaction. Eventhough under the transaction, the accused is liable to pay lesser amount, however, as per proviso to Section 138, demand must be in respect of the amount payable under the cheque. As in this case, demand was for lesser amount, there is no proper compliance of provisions of Section 138. Hence, the complaint has to be quashed.

9. Hence, the Criminal Original Petition is allowed and the complaint filed against the petitioner in C.C.No.7960 of 2006, is quashed. Consequently, connected M.Ps are closed.

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s/d-

Assistant Registrar(J)

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Sub-Assistant Registrar

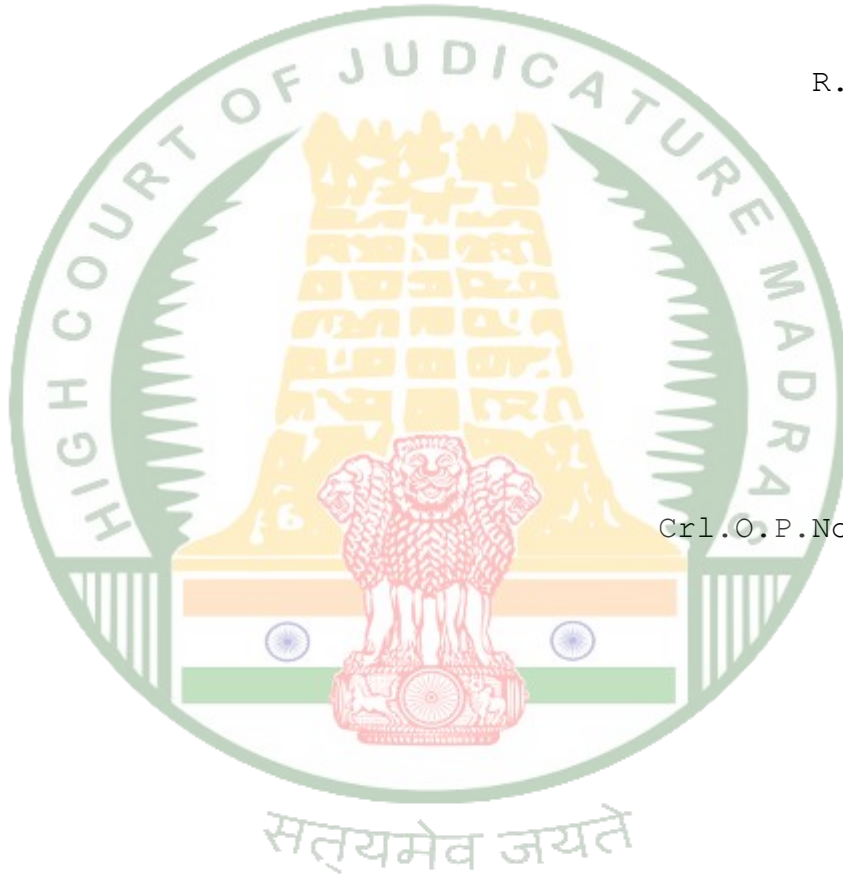
To

1. The XIV Metropolitan Magistrate, Egmore, Chennai.

2. -do- thro' The Chief Metropolitan Magistrate Court, Egmore, Chennai.

+ 1 cc to Mr.V.ayyadurai, Advocate SR 26812

+ 1 cc to M/s.Ramasubramaniam & Associates, Advocate SR 26939
kgk(co) prk8/7



R.S.Ramanathan, J.
sd

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