BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2016

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

Crl.O.P.(MD) No.18137 of 2013

Sagaya Arockiya Raj ... Petitioner/Accused

-vs-

Ganesh Kumar ... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in connection with the case in STC No.794 of 2012, pending on the file of the learned Judicial Magistrate No.1, Dindigul and quash the same.

For Petitioner : Mr.N.Sathish Babu
For Respondent : Mr.J.Lawrance

Orders Reserved on	Orders Pronounced on
31.08.2016	07.09.2016

O R D E R

The petitioner / accused has filed the quash petition, seeking to quash STC No.794 of 2012 filed by the respondent herein pending on the file of learned Judicial Magistrate, Dindigul.

Brief Facts:

2. The accused approached the respondent for a loan of Rs.6 lakhs on 15.04.2012 for the marriage expenses of his sister. The respondent paid a sum of Rs.6 lakhs. The accused was not able to repay the amount within the agreed period of three months and therefore, he issued a cheque drawn on ICICI Bank, Dindigul dated 22.09.2012. When the cheque was presented for collection to the Central Bank of India on 25.09.2012, the cheque was returned with endorsement “insufficient funds”. Thereafter, the respondent issued a notice through his counsel on 29.09.2012, demanding payment of the amount covered under the cheque. After receipt of the notice, accused / petitioner sent a reply denying the receipt of the cheque amount and also alleged that the respondent has no source to lend such huge money. The petitioner / accused failed to pay the amount within fifteen days after the receipt of the notice, as prescribed under Section 138(c) of the N.I. Act and therefore, complaint was filed on 11.10.2012 and it has been taken on file in STC No.794 of 2012.

3. According to the respondent, in order to evade payment, covered under the dishonored cheque, this quash petition has been filed with false allegation.

4. The main contention of the learned counsel for accused is that the complaint filed before expiry of 15 days from the issuance of notice under Section 138(c) of the Act, is not maintainable.

4.1. In support of the contention, the following decisions are relied upon:

i) **2010 (10) SCC 708 Vinay Kumar Shailendra vs. Delhi High Court Legal Services Committee;**

> "(iii) The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if,
>
> (a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue.
>
> (b) If the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque and
>
> (c) **If the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.**"

ii) **IV (2014) CCR 109 (SC), Yogendra Pratap Singh vs. Savitri Pandey and another;**

> "15. In Ashok Hegde6, the single Judge of the Karnataka High Court while dealing with the contention raised by the petitioner therein that the complainant has not given 15 days' time to the petitioner as contemplated under Section 138(b) of the NI Act and the complaint was premature and should not have been entertained, the single Judge held, "….. from the above, it is clear that he received the notice back on 21.09.1989. **Even accepting that the petitioner refused the notice on 20.09.1989, the respondent ought to have filed this complaint after the expiry of 15 days from the date of receipt of the notice.** The date of issuance of notice cannot be taken into account…….. Therefore, the cause of action had not arisen to file the complaint against the petitioner and the complaint was premature……."

4.2. From the refusal, there cannot be any inference that the accused refused to make the payment. The refusal may be to drag on the proceedings or the refusal may be to gain time to make payment or the refusal may be to tease the complainant. When no inference can be drawn as to the conduct of refusal, the complainant is bound to wait for 15 days. That cannot be the case when there is an outright denial of liability by issuing a reply.

iii) **2014 (9) SCC 129, Dashrath Rupsingh Rathod vs. State of Maharashtra and Another;**

"38. A proper understanding of the scheme underlying the provision would thus make it abundantly clear that while the offence is complete upon dishonour, **prosecution for such offence is deferred till the time the cause of action for such prosecution accrues to the complainant.** The proviso in that sense, simply postpones the actual prosecution of the offender till such time he fails to pay the amount within the statutory period prescribed for such payment. There is, in our opinion, a plausible reason why this was done. The Parliament in its wisdom considered it just and proper to give to the drawer of a dishonoured cheque **an opportunity to pay up the amount**, before permitting his prosecution no matter the offence is complete, the moment the cheque was dishonoured. **The law has to that extent granted a concession and prescribed a scheme under which dishonour need not necessarily lead to penal consequence if the drawer makes amends by making payment within the time stipulated once the dishonour is notified to him.** Payment of the cheque amount within the stipulated period will in such cases diffuse the element of criminality that Section 138 attributes to dishonour by way of a legal fiction implicit in the use of the words "shall be deemed to have committed an offence". The drawer would by such payment stand absolved by the penal consequences of dishonour. This scheme may be unique to Section 138 NI Act, but there is hardly any doubt that the Parliament is competent to legislate so to provide for situations where a cheque is dishonoured even without any criminal intention on the part of the drawer.

5. Thus, this section gives an opportunity not only to the honest drawer, but also to a dishonest drawer to make amends and to escape from prosecution. So far as this case is concerned, the alleged dishonest drawer did not want to make payment, but has chosen to say "No Payment". Therefore, there is no purpose in waiting for the completion of 15 days.

6. The contention of the learned counsel for the respondent is that the period of 15 days prescribed is only to enable the petitioner / accused for making the payment and when the object and aim of the particular provision is to give sufficient time for the petitioner / accused to arrange for repayment of the borrowed amount and when the petitioner has chosen to deny his liability itself, the respondent need not wait for the expiry of 15 days and the cause of action arises from the date on which the petitioner / accused failed to make the payment. In other words,

it is contended that the payee need not wait for the completion of 15 days period to lapse when the petitioner / accused did not make any payment and when he denied his liability itself.

6.1. Learned counsel for the respondent relied upon a decision in the case of **Rajendran vs. Danapal Pillai (Crl.RC.No.662 of 1994) decided on 17.06.1999;**

> "15. In my opinion, the cause of action arises from the date of the denial made even on the receipt of the notice issued under proviso (b) to Section 138 of the Negotiable Instruments Act, because the period of fifteen days is given after receipt of the statutory notice only for the purpose of making the payment, but not for denying the payment and to make the payee wait further till fifteen days lapse from the date of receipt of the said statutory notice. Therefore, **once the drawer denies the payment, in spite of the said statutory notice, the payee need not wait for completion of fifteen days to lapse from the date of receipt of the notice or for the mercy of change of mind of the drawer to make payment.** If the drawer, in case, changes his mind and makes the payment within the said fifteen days time in spite of his earlier denial, the complaint filed after the denial would become infructuous, but such surmise or assumption or presumption cannot invalidate the cause of action itself, that arises out of the denial of payment by the drawer, even after the receipt of the statutory notice issued under proviso (b) to Section 138 of the Negotiable Instruments Act. Hence, the complaint filed after the denial by the drawer before the expiry of the 15 days from the date of receipt of the statutory notice cannot be stated as premature and, therefore, the order dated August 25, 1994, in Crl. M. P. No. 2077 of 1994 holding the complaint in C. C. No. 2210 of 1993 as premature is hereby set aside."

7. The decisions relied on by the learned counsel for the petitioner, if understood in the context of the facts of this case, cannot be said that there is no cause of action on the date of filing of the complaint. Hence, the contention that the complaint is not maintainable has to be rejected.

8. In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To:

The Judicial Magistrate No.1,
Dindigul

+1cc to M/s.J.Lawarance, Advocate SR.No.50858
+1cc to M/s.N.Sathish Babu, Advocate SR.No.50879

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ORDER IN
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