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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

(Orders Reserved on : 18.08.2016)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.642 of 2016

and

Crl.M.P.Nos.4520 and 4521 of 2016

S.B.Krishnan

... Petitioner/Accused

Vs.

R.Sathish

...

Respondent/Complainant

Prayer: Criminal Revision Case filed under Sections 397 & 401 of the Code of Criminal Procedure, against the judgment passed in C.A.No.35 of 2014, dated 17.12.2015 on the file of the learned Principal Sessions Judge at Chengalpattu, confirming the judgment and conviction passed in C.C.No.136 of 2014, dated 17.11.2014 on the file of the learned Judicial Magistrate, Fast Track Court, Alandur, and praying to set aside the same.

For Petitioner : Mr.M.Kalyanasundaram, Senior
Counsel

for M/s. Star Associates

For Respondent : Mr.T.R.Ravi
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ORDER

This Criminal Revision Case is directed against the judgment passed by the learned Principal Sessions Judge at Chengalpattu, in C.A.No.35 of 2014, dated 17.12.2015, confirming the conviction and sentenced passed by the learned Judicial Magistrate, Fast Track Court, Alandur, in C.C.No.136 of 2014, dated 17.11.2014.

2. The learned Senior Counsel appearing for the revision petitioner/accused would mainly contend that in this case, the trial Court and the First Appellate Court have erred in coming to a conclusion that the revision petitioner/accused has committed an offence under Section 138 of the Negotiable Instruments Act. It is further contended that both the Courts below should not consider the

contract as a valid contract and hence, there is no privity of contract between the petitioner and the respondent. The learned Senior Counsel also submitted that both the Courts below went wrong in shifting the burden of proof upon the revision petitioner/accused to prove that the alleged agreement for debt dated 15.06.2013 is not genuine. The learned Senior Counsel for the revision petitioner/accused also contended that both the Courts below have failed to consider the fact that sufficient time was not given to the revision petitioner/accused to pay the cheque amount. Further, the complainant had issued a statutory notice to the accused demanding a sum of Rs.21,50,000/- instead of the cheque amount of Rs.5,00,000/- and hence, the notice sent by the complainant itself is not proper. Further, the learned Senior Counsel for the revision petitioner submitted that since no offence is made out against the revision petitioner/accused, the judgments passed by both the Courts below have to be set aside and the Criminal Revision Case has to be allowed.

3. The learned counsel for the respondent/complainant would

vehemently contend that the trial Court, after considering the oral and documentary evidence adduced on the side of the complainant, correctly passed an order convicting the accused under Section 138 of the Negotiable Instruments Act and sentencing him to undergo two months rigorous imprisonment and also directed the accused to pay the cheque amount of Rs.5,00,000/- towards compensation to the complainant. The First Appellate Court also, after analysing the entire evidence and facts and circumstances of the case, confirmed the order passed by the trial Court and therefore, there is no illegality or infirmity in the orders passed by both the Courts below. Hence, the learned counsel for the respondent prayed that the orders passed by both the Courts below have to be confirmed and the Criminal Revision Case has to be dismissed.

4. This Court has considered the submissions made by the learned Senior Counsel appearing for the petitioner/accused and the learned counsel appearing for the respondent/complainant and perused the entire records.

5. In this case, it is admitted on the side of the revision petitioner/accused that the accused had issued a cheque bearing No.654105 dated 25.12.2013 for Rs.5,00,000/- in favour of the complainant drawn on Canara Bank, K.H.Road, Chennai, and the said cheque was marked as Ex.P.2. Further, it is admitted that when the said cheque was presented for collection, it was returned only for the reason "Insufficient funds". Thereafter, the complainant had issued a lawyer notice to the accused on 01.04.2014 calling upon him to pay the entire amount viz., 21,50,000/-. The accused had received the said notice, but he failed to give any reply. Hence, the offence under Section 138 of the Negotiable Instruments Act is proved against the revision petitioner/accused. In the revision, the main ground alleged by the petitioner/accused is that the statutory notice issued by the complainant is not valid because it will not give proper time and it is only restricted the time for payment as 10 days. Further, together with the cheque amount in this case, the complainant also demanded further claim of Rs.21,50,000/-.

6. In this case, it is useful to refer Section 138 of the

Negotiable Instruments Act, 1881, which reads as follows:-

"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 [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, [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.

Explanation.— For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.”

7. Further, it is useful to refer Section 142 of the Negotiable Instruments Act, 1881, which reads as follows:-

"142. Cognizance of offences. — Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) —

(a) no Court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]

(c) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138."

8. In this case, the complainant had issued a lawyer notice under Ex.P.5 stating as follows:-

"1. ...

2. ...

3. ...

4. My client further states that your intention is wanted to cheat my client without paying the above said agreement amount. Hence, I hereby call upon on behalf of my client, to settle the above said cheque amount along with his share of the agreement amount of Rs.21,50,000/- within 10 days from the date of receipt of this legal notice, failing which my client will prefer to file a criminal complaint under Section 138 of N.I. Act against you in an appropriate forum in which you will held liable for all the costs and consequences, incidental charges thereto."

9. On reading of the above said notice-Ex.P.5, it is clear that the complainant has claimed the cheque amount in this case along with the cheque amount relating to another case viz., Rs.21,50,000/- and also directed the accused to pay the said amount within 10 days from the date of receipt of the legal notice. Further, on reading of Sections 138 and 142 of the Negotiable Instruments Act, it is clear that the Act has not specified any time limit as stipulated in the notice-Ex.P.5.

10. As per clause (c) of Section 138 of the Negotiable Instruments Act, cause of action arose for filing the complaint under

Section 138 of the Negotiable Instruments Act, when the drawer of 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.

11. In the above circumstances, since in the Negotiable Instruments Act specific time limit for payment of cheque amount has not been mentioned, it is not necessary to mention the specific time in the notice and only the cheque amount in the particular case alone has to be mentioned in the notice. Hence, the argument of the learned Senior Counsel for the revision petitioner that since in the notice, the complainant had demanded Rs.21,50,000/- in respect of the cheque amount for this case and also for another case, it is not a proper statutory notice is acceptable.

12. Further, the Act only specified that from which date, the drawyer of the cheque fails to pay the cheque amount within fifteen days of the receipt of the said notice, the cause of action will arose under Section 138 of the Negotiable Instruments Act and it cannot be

preclude him because of mentioning of 10 days in the statutory notice issued by the complainant. Hence, as per the Negotiable Instruments Act, the cause of action arose only after the drawyer of the cheque fails to pay the cheque amount within fifteen days of the receipt of the said notice.

13. In this case, it is admitted that after the receipt of the notice, the revision petitioner/accused has not paid the cheque amount within 15 days of the receipt of the lawyer notice and only after the cause of action arose, the complainant had filed a complaint within the time stipulated in the Act. Further, in this case, it is admitted on the side of the revision petitioner that the cheque was issued from his account and he has also not denied the issuance of cheque to the complainant and also the signature in the cheque.

14. In view of the above facts and circumstances of the case, this Court is of the considered view that the revision petitioner/accused has to explain how the cheque came into the custody of the complainant and the petitioner has also to prove why

and for what purpose the cheque was given to the complainant. In this case, it is clearly proved on the side of the respondent/complainant that to discharge the liability, the revision petitioner/accused had issued a cheque for Rs.5,00,000/-. Since the cheque was issued by the revision petitioner to the complainant according to the statutory provisions of the Negotiable Instruments Act, it is issued for valid consideration. Hence, the offence under Section 138 of the Negotiable Instruments Act was proved against the revision petitioner/accused.

15. In view of the above facts and circumstances of the case, this Court is of the considered view that there is no infirmity or illegality in the orders passed by both the Courts below. This Court finds no reason to interfere with the orders of both the Courts below which do not warrant any interference by this Court and hence, the criminal revision case is liable to be dismissed.

16. In the result, this Criminal Revision Case is dismissed.

Consequently, connected miscellaneous petitions are closed.

10.01.2017

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Internet :Yes

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To

1. The Principal Sessions Judge,
Chengalpattu.
2. The Judicial Magistrate,
Fast Track Court, Alandur.

G.CHOCKALINGAM, J.

Jrl

Order in
Crl.R.C.No.642 of 2016

10.01.2017
(3/4)