IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.Nos.19881 & 19882 of 2012
and
M.P.Nos.1 and 1 of 2012

1.M.Manickam ... Sole Petitioner in Crl.OP.19881/2012 & 1st Petitioner in Crl.OP.19882/2012

2.M.Balasubramaniam ... 2nd Petitioner in Crl.OP.19882/2012

Vs.

M/s.Shri Jhin Kusal Finance,
Proprietor Veena Jain,
Rep. by its Power of attorney
N.Dharmendar Kumar Doshi,
S/o. N.M.Doshi
38/4, Devendrapuram,
Salem - 636 001. ... Respondent in both the Crl.OPs

Common Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the records pertaining to the Criminal Proceedings in C.C.Nos.1092 and 1091 of 2003 on the file of the Judicial Magistrate No.I, Salem, quash the same by allowing these quash petitions.

(In both Crl.OPs)
For Petitioners : Mr.N.Manokaran

For Respondent : Mr.R.Nalliyappan

COMMON ORDER

These criminal original petitions were filed under section 482 of the Cr.P.C by the petitioners/Accused No.2 and 3 calling for the records pertaining to the criminal proceedings in C.C.Nos.1091 and 1092 of 2003 on the file of the learned Judicial Magistrate No.1, Salem for the alleged offences under sections 138 and 142 of the Negotiable Instruments Act.

2.Brief case of the petitioners/accused in both Crl.O.Ps

The facts of the case is that the Accused A2 is customer of the complainant and carrying dyeing factory on the name and style of P.M.Dyeing Factory and used to discount his cheques with the complainant, then and there, he will be paying the amount and will get back the cheques. The Accused A1 is the customer of A2 and doing textile business in the name of Shanthi Textiles. The A1 and A2 is the drawer of the cheque for Rs.1,33,400/- dated 16.5.2003 in cheuqe No.0966264 drawn on State Bank of India, Pallipalayam. The complainant present the cheques on 17.5.2003 for collection through his bank Tamil Nadu Mercantile Bank but the same was dishonoured with the reason "insufficient funds". Again the complainant presented the cheques on 18.7.2003, but the same was dishonoured on 23.7.2003. Again the complainant presented the cheque on 4.8.2003 but the same was dishonoured as insufficient funds and returned on 7.8.2003. On 18.8.2003 the complainant issued a statutory legal notice to the accused A1 and A2. A1 received the notice on 29.8.2003. A2 evaded receiving and the same was returned on 29.8.2003. Inspite of the said notice the petitioners/accused have not paid any amount. Hence the complaint filed before the trial Court and same was taken on file in C.C.Nos. 1091 and 1092 of 2003. Aggrieved over the same, these quash petition were filed by the Petitioners/accused.

3.Rival Submissions in both Crl.O.Ps

The learned counsel for the petitioners submits that as per the allegations made in the complaint, the first accused has expressed apology and requested the complainant to represent the cheque. Accordingly, as per the allegations made in the complaint, the said cheque was presented for collection on 18.7.2003 and it was returned unpaid on 23.7.2003. It is stated in the complaint that again the first accused has expressed apology and requested the complainant to represent the cheque, and it was represented on 4.8.2003, but it was not served upon the petitioners, however, the above said complaint was filed on 24.9.2003.

4.The learned counsel for the petitioners submits that the complaint in C.C.No.1092 of 2003 is pending for the past nine years for want of service of notice on the first accused. The petitioner A2 is a proprietorship concern. Admittedly, one D.Santhi, Proprietor of Santhi Exports had signed the cheque in question, whereas, it is alleged in the complaint that the cheque issued by the first accused in the name of the second accused had been discounted with the complainant on the basis of the endorsement made, therefore, the petitioner has been arrayed as accused No.2. Except the fact that the cheque in question stood in the name of the petitioner A2 was discounted with the complainant, no other allegations have been made against the petitioners.

5.The learned counsel for the petitioners submits that even as per the averments in the complaint, the disputed cheque dated 16.5.2003 was presented for collection on 18.7.2003 and it was returned unpaid with an endorsement "funds insufficient". Again the very same cheque was presented for collection on 4.8.2003 and it was returned unpaid with an endorsement "funds insufficient" on 7.8.2003. Under such circumstances, the conduct of the complainant in presenting the cheque on third occasion for collection on 4.8.2003 knowing fully well that the subject matter cheque was returned unpaid earlier on two occasions, is impermissible in law. Once the cheque was presented for collection and returned unpaid, it has to be treated as a stale cheque and it cannot be presented for collection. It appears that the complainant has repeatedly presented the cheque only to get over the period of limitation.

6.The learned counsel for the petitioners submits that admittedly, the subject matter cheque was issued by the first accused D.Santhi, Proprietor of Santhi Exports. A proprietorship concern is not a company and its stands absolutely on different footing. The petitioner submits that when the first accused is carrying on business in the name of proprietorship concern, she being the proprietor thereof would be solely responsible for conduct of its affairs. The petitioner submits that he is neither a drawer nor a person concerned with the first accused. Therefore, the respondent is entitled to file a complaint only against the drawer of the cheque and not against others especially when the drawer is a proprietorship concern.

7.The learned counsel for the petitioners submits that the respondent herein filed a private complaint in C.C.No.1091 of 2003 on the file of the learned Judicial Magistrate No.1 Salem as against the petitioners and one another for the alleged offences under sections 138 and 142 of Negotiable Instruments Act alleging that the complainant/respondent is a financier, that the first accused D.Shanthi, Proprietor Santhi Exports being the drawer of the cheque No.0962979 dated 21.3.2003 for Rs.1,50,000/- has issued in the name of the first petitioner (A2) represented by the authorized signatory (A3) had discounted the said cheque with the complainant. Accordingly, the respondent/complainant being the holder in due course on the basis of the endorsement made by the third accused on behalf of the second accused stated to have presented the cheque dated 21.3.2003 for collection on 23.3.2003. It was returned unpaid with an endorsement "funds insufficient"

8.The learned counsel for the petitioners submits that as per the allegations made in the complaint, the first accused has expressed apology and requested the complainant to represent the cheque. Accordingly as per the allegations made in the complaint, the said cheque was presented for collection on 7.4.2003 and it was returned unpaid on 10.4.2003. It is stated in the complaint that again the first accused has expressed apology and requested the complainant to represent the cheque, and it was represented on 4.8.2003, but it was returned unpaid with an endorsement "funds insufficient" Thereafter, the respondent has issued a legal notice dated 29.8.2003, but it was not served upon the petitioners, however, the above said complaint was filed on 24.9.2003.

9.The learned counsel for the petitioners submits that the complaint in C.C.No.1091 of 2003 is pending for the past nine years for want of service of notice on the first accused. The second petitioner is the brother of the first petitioner. The first petitioner A2 is a proprietorship concern. Admittedly, one D.Santhi proprietor of Santhi Exports had signed the cheque in question. Whereas, it is alleged in the complaint that the cheque issued by the first accused in the name of second accused had been discounted with the complainant on the basis of the endorsement made, therefore, the petitioners have been arrayed as accused Nos.2 and 3. Except the fact that the cheque in question stood in the name of the first petitioner A2 was discounted with the complainant, no other allegations have been made against the petitioners.

10.The learned counsel for the petitioners submits that even as per the averments in the complaint, the disputed cheque dated 21.3.2003 was presented for collection on 23.3.2003 and it was returned unpaid with an endorsement "funds insufficient" Again the very same cheque was presented for collection on 7.4.2003 and it was returned unpaid with an endorsement "funds insufficient" on 10.4.2003. Under such circumstances, the conduct of the complainant in presenting the cheque on third occasion for collection on 4.8.2003 knowing fully well that the subject matter cheque was returned unpaid earlier on two occasions, is impermissible in law. Once the cheque was presented for collection and returned unpaid, it has to be treated as a stale cheque and it cannot be presented for collection. It appears that the complainant has repeatedly presented the cheque only to get over the period of limitation.

11.The learned counsel for the petitioners/accused cited the following decisions in support of their contentions:

1) 2011 (1) MWN (Cr) DCC 76 Palaniappa Mills Vs A.Vaithiyalingam

2) 2012(2) MWN (Cr) (DCC) 28 (Mad) G.B.Finance rep.by Kottesaran Vs V.Jothi

3) 2013 (6) CTC 844 Hari Fabrics Prop.S.Hariraj Vs Kulandaivel

12.The learned counsel appearing for the respondent opposed the quash petitions and sought for their dismissal.

13.I heard Mr.N.Manokaran, learned counsel for the petitioners and Mr.R.Nalliyappan, learned counsel for the respondent in both the criminal original petitions and perused the entire materials available on record.

14.In the present cases, there is no endorsement found in the document and the passing of consideration which also not sufficient as seen from the complaint.

15.Admittedly, the subject matter cheque was issued by the first accused D.Santhi, Proprietor of Santhi Exports. A proprietorship concern is not a company and its stands absolutely on different footing. The petitioner submits that when the first accused is carrying on business in the name of proprietorship concern, she being the proprietor thereof would be solely responsible for conduct of its affairs. The petitioner submits that he is neither a drawer nor a person concerned with the first accused. Therefore, the respondent is entitled to file a complaint only against the drawer of the cheque and not against others especially when the drawer is a proprietorship concern.

16.The respondent herein has filed two complaints against the petitioners/accused as holder in the due course of the cheques in question. The main point that arises for consideration is whether mere signature of the holder in question amounts to due endorsement evidencing the transactions.

17.Thus, this Court of the view that the complainant miserably failed to prove the nature of the transaction between the parties and failed to prove the transaction of the cheques in his favour, as such the question of treating him as holder in due course to have recourse to section 138 of the Negotiable Instruments Act does not arise herein.

18.In the result, both the criminal original petitions are allowed and the proceedings in C.C.Nos.1091 and 1092 of 2003 on the file of the learned Judicial Magistrate No.1, Salem are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vs

To

The Judicial Magistrate No.I, Salem.

Crl.O.P.Nos.19881 & 19882 of 2012
and
M.P.Nos.1 and 1 of 2012

GJ II(CO)
GN(14/03/2019)