IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.12.2018
CORAM:
THE HON'BLE MR.JUSTICE B. PUGALENDHI
Crl.O.P.No.16232 of 2011
and
M.P.No.1 of 2011

Premalatha ... Petitioner/Accused

/Vs/

V.Kumaresan ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the entire records in C.C.No.1194 of 2009 on the file of the XIII Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner/Accused : Mr.N.Iyyakannu

For Respondent/Complainant : Mr.K.Thilageswaran

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O R D E R

This Criminal Original Petition has been filed by the petitioner/accused for quashing the proceedings pending against her in C.C.No.1194 of 2009 on the file of the learned 13th Metropolitan Magistrate, Egmore, Chennai.

2. The case of the prosecution is that the petitioner / accused herein has borrowed a sum of Rs.1,75,000/- from the respondent / complainant and for discharge of part of the liability, the petitioner / accused has issued three Cheques, dated 23.06.2008, 19.06.2008 & 25.06.2008, for a sum of Rs.26,000/-, Rs.30,000/- & Rs.19,000/-, respectively. When the respondent / complainant presented these cheques for collection, they were returned with an endorsement 'Exceeds arrangement'. Since the cheques issued by the petitioner / accused got dishonoured, the respondent / complainant issued a statutory notice, followed by which, the present complaint under Section 138 of the Negotiable Instruments Act came to be lodged.

3. Placing reliance upon the second proviso to Section 138 of the Negotiable Instruments Act, learned Counsel for the petitioner attacked the complaint and contended that the petitioner had issued Cheques for a sum of Rs.75,000/- (26,000/- + 30,000/- + 19,000/-), whereas, the respondent has issued notice

as if the cheque amount was Rs.1,75,000/-, as such the notice itself is a defective one. Therefore, he prays for allowing the present petition.

4. Learned Counsel for the respondent, on the other hand, vehemently contended that the petitioner is liable to pay Rs.1,75,000/- and for discharge of part of the liability, the present cheques were issued, however the same were dishonoured. He further submitted that even in the notice itself, this has been clearly explained and therefore, the notice cannot be construed as a defective one.

5. Heard the learned Counsel on either side and perused the documents placed on record.

6. This complaint is filed for the offence punishable under Section 138 of the Negotiable Instruments Act. An offence under Section 138 of the Negotiable Instruments Act is made out where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount or money to another person from out of that account for the discharge, in whole or in part, is returned unpaid, either on the ground of insufficient funds or that it exceeds the amount arranged to be paid from that account, such person shall be deemed to have committed an offence, subject to the provisions thereon. For better appreciation, Section 138 of the Negotiable Instruments Act is extracted thus:

> "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 provision of this Act, be punished with imprisonment for a term which may extend to one year, 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 fifteen 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. The second proviso to Section 138 contemplates a notice in writing to the drawer of the Cheque within thirty days on receipt of the information from the Bank regarding the return of the Cheque as unpaid. The said notice of demand shall be for the payment of the said amount of money. The expression 'said amount of money' refers to the Cheque amount. The accused has issued three Cheques dated 23.06.2008, 19.06.2008 & 25.06.2008, for a sum of Rs.26,000/-, Rs.30,000/- & Rs.19,000/-, respectively. The total amount of the Cheque is Rs.75,000/-, whereas, the notice as required under Section 138 of the Negotiable Instruments Act has been issued by the respondent / complainant demanding a sum of Rs.1,75,000/-, ie., more than the Cheque amount.

8. Though the Counsel for the respondent / complainant had contended that apart from the Cheque amount, the petitioner / accused is liable to pay a sum of Rs.1,00,000/- and therefore, the demand was made for the entire dues, the offence under Section 138 of the Negotiable Instruments Act will be attracted only when the drawer of the Cheque fails to make the payment of the Cheque amount to the holder in due course on receipt of the notice.

9. For better understanding, the relevant portion from the notice issued by the respondent / complainant is extracted thus:

> "In the above circumstances, we hereby call upon you to pay our client the sum of Rs.1,75,000/- due on the aforementioned dishonoured cheques within 15 days from service hereof, failing which out client will enforce action under section 138 of N.I. Act against you in the appropriate forum."

10. In the notice, it is clearly mentioned that the petitioner is liable for Rs.1,75,000/- in respect of the dishonoured cheques, when the admitted position is Rs.75,000/- towards the dishonoured cheques. As stated supra, in the notice, the demand has to be made for the cheque amount,

otherwise the notice will be bad. Of course, there are certain exceptions, viz., the incidental charges, notice charges, interest and costs, which has to be specifically mentioned in the notice. Here in the case on hand, an omnibus demand is made without specifying what was due under the dishonoured cheque and therefore, the notice will have to be treated as a invalid one and the proceedings pursuant to such notice could not be permitted to proceed with.

11. Under the above circumstances, the proceedings pending against the petitioner in C.C.No.1194 of 2009 on the file of the learned 13th Metropolitan Magistrate, Egmore, Chennai, is liable to be set aside and accordingly, the same is set aside. In fine, this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The 13th Metropolitan Magistrate,
Egmore, Chennai.

+1cc to Mr.N.Iyyakannu, Advocate sr.no.84741

Crl.O.P.No.16232 of 2011
and
M.P.No.1 of 2011

nr 03/05/2019