

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.No.28019 of 2013

and

MP.No.1 of 2013

V.Neelakandan

... Petitioner/Accused

Vs.

L MAC PAVE

Proprietrix ABY MATHEW

Rep.by Power of Attorney

Babu T.Thomas

... Respondent/complainant

PRAYER : This Criminal Original Petition has been filed under Section 482 of Cr.P.C, to call for the records relating to C.C.No.466 of 2013 on the file of the learned Judicial Magistrate No.VII, Coimbatore and to quash the same.

For Petitioner : Mr.M.Guruprasad

For Respondent : No Appearance

ORDER

This petition has been filed by the accused to quash the proceedings against him in C.C.No.466 of 2013 on the file of the learned Judicial Magistrate No.VII, Coimbatore.

2. The respondent herein has filed a private complaint stating that on 23.03.2013, the petitioner herein placed an order with the complainant for constructing a badminton court at Anna Nagar, Chennai. The said work was completed on 01.04.2013 and for the construction work, the petitioner has to pay a sum of Rs.4,84,313/- and for discharging the said liability, the petitioner herein had issued two cheques, one is for Rs.1,00,000/- and another one is for Rs.1,34,000/-. When the said cheques were presented for encashment, those cheques were returned for the reason "Funds Insufficient" and after issuing statutory notice, he has filed a complaint under Section 138 of the Negotiable Instruments Act. Based on the said complaint, the Judicial Magistrate No.VII, Coimbatore has taken the case on file in C.C.No.466 of 2013.

3. The learned counsel for the petitioner has submitted that in the said case, summons were not served on the petitioner, but the learned Judicial Magistrate has issued Non-bailable warrant against the petitioner and after knowing the said fact, the petitioner has surrendered before the concerned Court and filed a petition to recall the warrant and the same was allowed. He further submitted that the statutory notice was not at all served on the petitioner and it was received by some other person. He further submitted that as per the complaint, the cheques were issued on behalf of the Neel Homes but the petitioner herein is neither proprietor nor authorized signatory. He further submitted that the bank accounts statement would clearly show that the petitioner is not a proprietor of Neel Homes and on the contrary, one V.N.Ambrish Neelmam is the proprietor of the said Neel Homes and therefore Section 138 of the Negotiable Instruments Act will not attract against the petitioner. In support of the said contentions, he relied upon the decision in *Aparna A. Shah /vs/ Sheth Developers Pvt Ltd and others*, AIR 2013 SC 3210.

4. The respondent herein after receipt of the notice from this court, initially entered appearance through counsel, but, subsequently, the said counsel reported no instructions and hence the case has been posted by printing the name of the respondent in the cause list, but the respondent has not appeared either in person or through counsel. Hence after hearing the arguments of the learned counsel for the petitioner and perusing the records, order is being passed.

5. A perusal of the copies of the cheques filed along with typed set of papers shows that the said cheques were issued for Neel Homes and signed by the authorized signatory. The case of the petitioner is that he is neither a proprietor of the said Neel homes nor an authorized signatory. The petitioner also produced a copy of the statement of accounts relating to Account No.754164563 of Indian Bank, Amangikarai Branch. In the said statement it is stated that one V.N.Ambrish Neelmam is the proprietor of Neel Homes. So, it is clear that the petitioner herein is not a proprietor of the Neel Homes. In the said complaint, it is simply stated that the petitioner herein is the proprietor of Neel Homes. As already pointed out that the statement of accounts would clearly show that only V.N.Ambrish Neelmam is the proprietor of Neel Homes and not the petitioner herein.

6. In *Aparna A. Shah /vs/ Sheth Developers Pvt Ltd and others* (supra), the Hon'ble Supreme Court in Paragraph Nos.8 and 9 observed as follows:

" 8. In order to constitute an offence under Section 138 of the N.I.Act, this Court, in Jugesh Sehgal V. Shamser Singh Gogi Manu/SC/1198/2009: (2009) 14 SCC 683, noted the following ingredients which are required to be fulfilled:

(i) a person must have drawn a cheque on an account maintained by in a bank for payment of a certain amount of money to another person from out of that account;

(ii) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that 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;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank;

(v) the payee or the holder in due course of cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act."

Considering the language used in Section 138 and taking note of background agreement pursuant to which a cheque is issued by more than one person, we are of the view that it is only the "drawer" of the cheque who can be made liable for the penal action under the provisions of the N.I.Act. It is settled law that strict interpretation is required to be given to penal statutes.

9. In Jugesh Sehgal (supra), after noting the ingredients for attracting Section 138 on the facts of the case, this Court concluded that there is no case to proceed under Section 138 of the Act. In that case, on 20.01.2001, the complainant filed an FIR against all the accused for the offence under Sections 420, 467, 468, 471 and 406 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and there was hardly any dispute that the cheque, subject-matter of the complaint under Section 138 of the N.I. Act, had not been drawn by the appellant on an account maintained by him in Indian Bank, Sonapat Branch. In the light of the ingredients required to be fulfilled to attract the provisions of Section 138, this Court, after finding that there is little doubt that the very first ingredient of Section 138 of the N.I. Act enumerated above is not satisfied and concluded that the case against the appellant for having committed an offence under Section 138 cannot be proved. ."

From the aforesaid decision, it is clear that for attracting Section 138 of the Negotiable Instruments Act, a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money from out of that of account. In this case, the statement of accounts would clearly show that petitioner is not a proprietor of Neel Homes and as such the petitioner cannot be prosecuted for the offence under Section 138 of the Negotiable Instruments Act.

76. In the result, this petition is allowed. The proceedings against the petitioner herein in C.C.No.466 of 2013 on the file of the Judicial Magistrate No.7, Coimbatore is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

vv/gsp

To

1. The Judicial Magistrate No.VII,
Coimbatore.

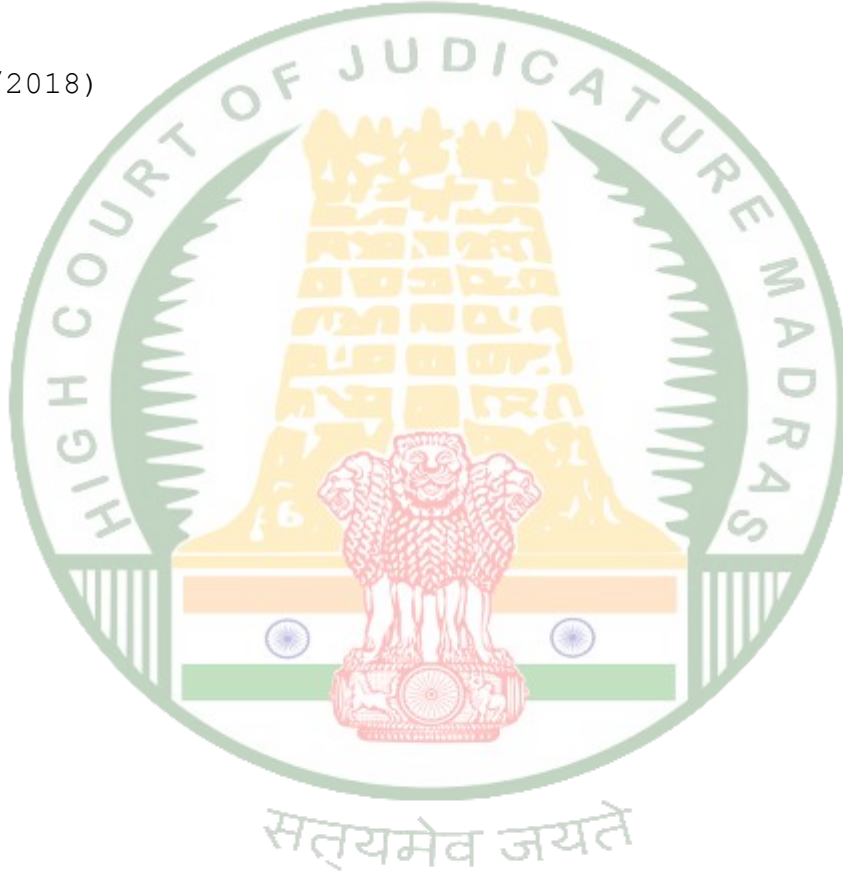
2. The Chief Judicial Magistrate,
Coimbatore.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.74185

Cr1.OP.No.28019 of 2013
and
MP.No.1 of 2013

RV (CO)
ssm(19/12/2018)



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