

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.319 of 2007

P.Sengodan

... Appellant / Complainant

- Vs -

1. Sri Selvamurugan Rig Service
Represented by its Managing Partner
N.Ramesh,
No.10, Sattayampudur,
Anangur Main Road,
Tiruchengode Town and Taluk,
Namakkal District.

2. N.Ramesh ... Respondents / Accused

Prayer : This Criminal Appeal is filed under Section 378 of Cr.P.C., against the judgment of acquittal passed by the learned Judicial Magistrate Court, No.I, Sankari, Salem District in C.C.No.21 of 2005 dated 27.02.2007 acquitting the respondent for the offence punishable under Section 138 read with 142 of the Negotiable Instruments Act.

For Appellant : Mr.A.Sermaraj

For Respondents: Mr.C.D.Johnson

JUDGMENT

The appeal is filed by the appellant/complainant as against the order of acquittal passed by the learned Judicial Magistrate Court, No.I, Sankari, Salem District in C.C.No.21 of 2005 dated 27.02.2007.

2. The complainant has filed the complaint under Section 138 of the Negotiable Instruments Act, wherein it is alleged that the 2nd accused is the Managing Partner of Sri Selvamurugan Rig Service/1st accused and the 2nd accused for the purpose of business for the 1st accused company borrowed a sum of Rs.7,50,000/- on 25.02.2004 for which the 2nd accused handed over a cheque dated 25.08.2004 bearing No.593962 to the appellant.

Thereafter, on instruction by the 2nd accused, the cheque was presented in the Bank for collection by the appellant on 01.09.2004. The cheque was returned on 03.09.2004 'for insufficient funds'. Again the cheque was presented on 19.11.2004, the cheque was again returned on 22.11.2004 for the very same reason 'insufficient funds'. Thereafter, the complainant sent a legal notice through his lawyer on 22.12.2004 and demanded that within 15 days, the respondents have to repay the borrowed amount. The said legal notice was received on 23.12.2004. However, the respondents did not repay the cheque amount to the appellant. Hence, the appellant filed a complaint in C.C.No.21 of 2005 before the learned Judicial Magistrate Court, No.I, Sankari, Salem District. However the lower Court dismissed the case on the ground that legal notice was given by the appellant twice to the respondents. The issue is already settled. The appellant/complainant can send any number of notice within the validity period. The law is well settled in the decision of the Madurai Bench of this Court in the case of S.Palaniappan v. V.Packiyam reported in 2015(2) MWN (Cr.) DCC 27 (Mad.), the cheque can be presented at any number of times within its validity period. However, without analysing the decision of the Apex Court, the lower court dismissed the complaint given by the appellant/complainant.

3. It is useful to extract hereunder the relevant portion of the decision of the Madurai Bench of this Court reported in 2015(2) MWN (Cr.) DCC 27 (Mad.) (S.Palaniappan vs. V.Packiyam):

'4. The sole ground raised by the learned Counsel for the Petitioner, which is to be immediately rejected is that the Respondent, having once caused statutory Notice, has represented the Cheque and thereafter issued further statutory Notice under Section 138 of Negotiable Instruments Act and then preferred the Complaint.

5. The learned Counsel for the Respondent relied on the judgment is MSR Leathers v. S.Palaniappan and another, 2013(1)MWN (Cr.) DCC 19 (SC) : 2012 (6) CTC 101 (SC), wherein the Hon'ble Supreme Court has held that a holder of Cheque can present Cheque any number of times within a period of 6 months or during its validity.

6. In view of the said judgment, the Cheque may be presented any number of time within the validity period and mere issue of statutory Notice on the earlier presentation would not be bar to further action of Complaint under Section 138 of Negotiable Instruments Act. Hence, this Petition is dismissed. Consequently, connected M.Ps. 1 & 3 of 2014 are closed.'

4. In view of the above said legal principle, I am inclined to remand the matter back to the trial court for fresh consideration. Accordingly, the order dated 27.02.2007 in C.C.No.21 of 2005 is set aside. The learned Judicial Magistrate Court, No.I, Sankari, Salem, is hereby directed to consider the complaint in C.C.No.21 of 2005 afresh and dispose of the same, after affording opportunity to the other side, within a period of six months from the date of receipt of a copy of this order.

With the above direction, this Criminal Appeal is disposed of.

Sd/-
Assistant Registrar (CS II)

//True copy//

Sub Assistant Registrar

ssn

To

- 1.The Judicial Magistrate Court, No.I,
Sangagiri,
Salem District.
2. Do Thro The Chief Judicial Magistrate,
Salem.
- 3.The Director General of Police,
Tamilnadu, Mylapore, Chennai-4.
- 4.The District Collector,
District Magistrate,
- 5.The Section Officer,
Crl.Section Records,
High Court, Madras.

+1cc to Mr.A.Sermaraj, Advocate SR.No.39975

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BR(CO)
GN(17/07/2018)