



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P. (MD) .No.10973 of 2014
and
M.P. (MD) Nos.1 and 2 of 2014

Jabar Ali

... Petitioner

Vs.

A.Abdul Khadar

... Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records from the lower Court in STC No.1332 of 2013 on the file of the Judicial Magistrate No.II, Tiruchirapalli and quash the same.

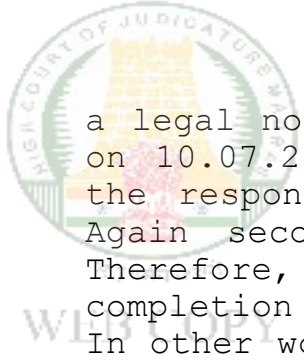
For Petitioners : Mr.J.Senthilkumar
For Respondent : Mr.R.Alagumani

ORDER

This petition is filed to quash the proceedings in S.T.C.No.1332 of 2013 on the file of the learned Judicial Magistrate No.II, Tiruchirapalli.

2.The case of the respondent is that the petitioner being a friend has borrowed a sum of Rs.4,00,000/- from the respondent due to his urgent need for his business on 13.12.2011 through Cheque Nos.98171, 98172 and 98173, each for one lakh and by cash Rs.1,00,000/- totally Rs.4,00,000/-. To discharge the said debt, the petitioner on 10.04.2013 issued a Cheque bearing Cheque No.745109 drawn on Punjab National Bank, Royal Road, Trichy for a sum of Rs.4,00,000/-. On presentation of the said cheque, it was returned with an endorsment 'insufficient fund'. Hence, on 08.06.2013 the respondent/defacto complainant issued a legal notice to the petitioner and the same was returned with the remarks of 'party out of station'. Again on 10.07.2013, the cheque was re-presented and the same was also returned as 'insufficient fund'. Therefore, another legal notice was caused by the respondent on 31.07.2013 and the same was received by the petitioner on 05.08.2016. Even after receiving the same, the petitioner neither sent any reply nor repaid the amount. Hence, the complaint.

3.The learned counsel for the petitioner would submit that as per the case of the respondent, the cheque was issued on 10.04.2013 for a sum of Rs.4,00,000/-, it was presented on 13.05.2013 and it was returned as 'insufficient fund', for which the respondent issued



a legal notice to the petitioner on 08.06.2013. Thereafter, again on 10.07.2013, the same cheque was re-presented for collection by the respondent and the same was returned as 'insufficient fund'. Again second time, the legal notice was issued on 31.07.2013. Therefore, admittedly, the said cheque was presented after completion of three months from the date of the issuance of cheque. In other words the cheque was issued on 10.04.2013 and the same was presented for collection only on 10.07.2013, after a period of three months. Therefore, the alleged cheque became invalid. Therefore, the offence under Section 138 Negotiable Instruments Act, 1881 is not at all maintained.

4.He would further submit that firstly the alleged cheque was presented for collection on 03.05.2013. Since it was returned as 'insufficient fund', legal notice has been issued on 08.06.2013. But the complaint has been given for the cause of action that arose for the legal notice dated 31.07.2013. Therefore, the complaint is not at all maintainable and it is liable to be rejected. Therefore, he prayed for quashing the criminal proceedings.

5.Per contra the learned counsel for the respondent would submit that the petitioner did not dispute the issuance of cheque but he disputed the signature of the cheque and therefore it is admitted that the cheque was issued for legally enforceable debt. Further, he would submit that originally the cheque was presented on 13.05.2013. It was within the statutory period of three months from the date of issuance of cheque. For the return of the said cheque, statutory notice was also issued to the petitioner on 08.06.2013. It was returned as 'party out of station'. Therefore, when it was once again re-presented on 10.07.2013, the cheque was returned as 'insufficient fund', for which also the legal notice was sent on 31.07.2013. Therefore, the complaint is very much maintainable as against the petitioner and he prayed for the dismissal of the petition.

6.Heard both sides.

7.The only point for consideration is that the presentation of the cheque dated 10.04.2013, on 10.07.2013 is beyond three months period as contemplated under the Act. It is seen from the guidelines issued by the Reserve Bank of India that the validity of the instrument, cheque and drafts is reduced from six months to three months from the date of issuance of such instrument. Such direction was effected from 01.04.2012. Therefore, the alleged cheque has to be presented within a period of three months from the date of issuance of cheque i.e., 90 days. Therefore, the banker ought not to have entertained the cheque and it was liable to be rejected as invalid.

8.The leaned counsel for the petitioner also relied upon the judgment reported in 2010 (1) LW (Cr1) 127 [Brij Kishore A Mehta Vs. M/s Aditya Securities Limited Rep. by its Managaer], wherein it has



been held as follows:-

"7. When admittedly the cheque in question has reached the drawee bank beyond its period of validity i.e., on 10.02.2001, the same has been rightly returned by the banker though with an endorsement 'insufficient funds'. In a decision reported in AIR 2001 Supreme Court 1161 (Shri Ishar Alloys Steels Ltd. v. Jayaswals NECO Ltd.), the Apex Court has laid down that the cheque is always to be presented to the drawer's bank on which the cheque is issued and the payee of the cheque has the option to present the cheque in any bank where he has his account but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque in the drawee or payee bank on which the cheque is drawn within the period of six months from the date on which it is shown to have been issued.

8. Therefore, when admittedly the cheque in question has reached the drawee bank only on 10.02.2001, that is, after the validity period of the cheque is over, the complaint ought not to have been taken on file by the learned Magistrate."

9. The judgment cited by the learned counsel for the petitioner is squarely applied to the case on hand. Therefore, the cheque was presented after the validity period of the said cheque and as such, the complaint ought not to have been taken on file by the learned Magistrate.

10. In view of the above discussion, this criminal original petition is allowed and the proceedings in STC No.1332 of 2013 on the file of the learned Judicial Magistrate No.II, Trichy is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The Judicial Magistrate No.II, Tiruchirapalli.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.Alagumani, Advocate, Sr.No.90887.

+1cc to Mr.J.Senthilkumar, Advocate, Sr.No.90905.

Cr1.O.P. (MD) .No.10973 of 2014
12.10.2018