



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P. (MD) .No.17065 of 2014

and

M.P. (MD) No.1 of 2014

Muthukumar

..Petitioner

Vs.

Thangavel

..Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.37 of 2014 on the file of the Judicial Magistrate, Musiri and quash the same.

For Petitioner : Mr.P.T.Ramesh Raja

For Respondent : Mr.K.Gokul

O R D E R

This quash petition is filed to quash the criminal proceedings in in C.C.No.37 of 2014 on the file of the Judicial Magistrate, Musiri having been taken cognizance for the offence under Section 138 of the Negotiable Instrument Act

2. The case of the complainant is that on 01.04.2014 a sum of Rs.1,50,000/-borrowed by the petitioner. On the same day he issued cheques to the respondent/defacto complainant. The cheque has been presented on 28.04.2014 with his banker City Union Bank, Madurai. The said cheque was returned dishonoured with an endorsement "Funds Insufficient " Therefore the respondent caused statutory notice under section 138 of the NI Act on 02.05.2014 and the same was received by the petitioner on 05.05.14. After receipt of notice, the petitioner neither repaid the money nor sent any reply. Hence the respondent/defacto complainant filed the present complaint for offence under section 138 of the Negotiable Instrument Act on 14.05.2014 before the learned Judicial Magistrate, Madurai.

3. The learned counsel for the petitioner would submit that procedure laid down under Section 138 of the Negotiable Act is not followed by the defacto complainant. The petitioner ought to have given sufficient time namely 15 days from the date of receipt of notice to repay the cheque amount and if not paid the cheque amount, the defacto complainant can freely present a complaint after 15 days. Here statutory notice was dated 02.05.2014 received by the petitioner on 05.05.2014. Without even completing 15 days from the 05.05.2014, on 14.05.2014, the said complaint has been presented for offences under Section 138 of the Negotiable Instrument Act. Hence he prayed for quashing of the criminal



4. The learned counsel for the respondent/complaint would submit that though admittedly the petitioner had borrowed a sum of Rs.1,50,000/-and issued cheque for the said amount and on his instructions on 28.04.2014 this cheque was presented for collection. The cheque was returned as "Funds Insufficient " Therefore the respondent caused statutory notice and the same was received by the petitioner on 05.05.2015. After receipt of same, the petitioner did not repay the cheque amount . Hence he prayed for dismissal of the quash petition.

5. Heard both sides.

6. Admittedly the cheque was presented on 28.04.2014 by the respondent/defacto complainant with his banker City Union Bank, Madurai. The said cheque was returned dishonoured in 28.04.2014 for the reason "Funds Insufficient" on 02.05.2014. Statutory notice has been issued by the respondent to the petitioner and notice was received by the petitioner on 05.05.2014. It is relevant to extract section 138(c) of the Negotiable Instrument Act:

"138.....

(c) The drawer of the 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".

7. Therefore the respondent/ complainant did not apply the procedure laid down under section 138(c) of the Negotiable Instrument Act. Therefore the complaint is not maintainable as against the petitioner and it is premature. On this ground alone the complaint cannot be sustainable.

8. Accordingly the Criminal Original Petition stands allowed and the proceedings in C.C.No.37 of 2014 on the file of the Judicial Magistrate, Musiri is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar(CS-III)

To

The Judicial Magistrate,
Musiri

+1cc to Mr.P.T.RAMESH RAJA, Advocate, SR.No. 91820

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and

M.P. (MD) No.1 of 2014

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