

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.O.P.No.27005 of 2013 and
M.P.No.1 of 2013

ELITE ENGINEERING & CONSTRUCTION
(HYD) PVT LTD.,
Rep. by its Proprietor V.Srinivasan,
No.18, Defense Colony,
Ekkattuthangal,
Chennai - 600 097.Petitioner

Vs.

M/s.Sri Lakshmi Earth Movers
Earthmoving & Earth Work Contractors,
No.11/27, Bhqavani Main Road, Opposite to
The Indis Cements Limited,
Sankari West, Salem (dist) Tamilnadu
Rep. by its Proprietor R.Murugan
S/o. Ramaswamy, residing at
d/o 14/217, Edappadi Main Road,
Seeranganvalavu Iruppali Village & (PO),
Edappadi Taluk, Salem District. Respondent

PRAYER: Criminal Original Petition filed under Section 482
Cr.P.C. praying to call for the records pertaining to the
complaint in S.T.C.No.732 of 2012 pending on the file of the
learned Judicial Magistrate No.II, Sankari and quash the said
complaint as against the petitioner/accused.

For Petitioner : Mr.J.Franklin

For Respondent : Notice Served - No Appearance

ORDER

The petitioner is accused and respondent is complainant.
The respondent filed a private complaint against the
petitioner under Section 200 of Cr.P.C. before the learned
Judicial Magistrate No.II, Sankari, in S.T.C.No.732 of 2012
for the offence punishable under Section 138 of Negotiable
Instruments Act. Pending trial, the accused has approached
this Court by filing this petition seeking to quash the same
invoking Section 482 of Cr.P.C.

2 The learned counsel appearing for the petitioner/accused would submit that signature and issuance of cheque is not disputed, but, the petitioner has repaid the amount due to the respondent/complainant even prior to service of statutory notice. The cheque was presented by the respondent for collection on 06.01.2012 and statutory notice was issued on 17.02.2012, whereas, the petitioner repaid the amount by way of RTGS to the account of the respondent on 10.01.2012 much prior to issuance of statutory notice. After receipt of the statutory notice, the petitioner has replied stating that he has already repaid the amount, despite the same, the respondent has filed the present complaint against the petitioner, which was also taken on file by the learned Judicial Magistrate No.II, Sankari, in S.T.C.No.732 of 2012. Hence the above case has to be quashed at the threshold itself.

3 Despite service of notice, none appeared on behalf of the respondent/complainant. Heard the learned counsel appearing for the petitioner/accused and perused the materials available on record.

4 On a perusal of the records submitted by the petitioner i.e. RTGS challan, it reveals that the petitioner has repaid the amount of Rs.1,50,000/- mentioned in the complaint filed by the respondent on 10.01.2012 itself. Further, statutory notice served only on 17.02.2012 and in the reply sent by the petitioner on 13.03.2012, he has clearly stated that he repaid the amount of Rs.1,50,000/- by way of RTGS on 10.01.2012 and it was also confirmed with the respondent over phone and asked to return the dishonored cheque. Despite the same, the respondent has filed the present complaint on 12.03.2012. It is pertinent to extract Section 138 of Negotiable Instruments Act, which reads as follows:

"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."

5 On reading of the above, it is clear that mere dishonor of the cheque is not an offence, after receipt of the statutory notice, if the accused failed to make payment within 15 days from the date of receipt of the notice, then only the offence under Section 138 of Negotiable Instruments Act will come into play. In the present case, the petitioner has repaid the amount to the respondent by way of RTGS on 10.01.2012 itself much prior to issuance of statutory notice and in the reply also the petitioner has clearly stated about the repayment of the amount and hence ingredients of Section 138 of Negotiable Instruments Act was not made out. Further, on reading of the complaint filed by the respondent, nowhere, it is mentioned about the reply notice sent by the petitioner. Under these circumstances, this Court is inclined to quash the case against the petitioner.

6 In the result, the criminal original petition is allowed and case in S.T.C.No.732 of 2012 pending on the file of the learned Judicial Magistrate No.II, Sankari, is hereby quashed. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate No.II, Sankari.

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