IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.No.10509 of 2014
M.P.No. 1 of 2014

A.S.P.G.Palanisamy ... Petitioner

Vs.

S.Ravichandran ... Respondent

**PRAYER:** Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to the proceedings in S.T.C.No.19 of 2014, on the file of the learned Fast Track Judicial Magistrate No.II, Erode and to quash the same.

For Petitioner : Mr. S.Subbiah
Senior Counsel
For Mr.P.Raja

For Respondent : Mr.S.Dhansekaran

**ORDER**

This Petition has been filed to quash the proceedings in S.T.C.No.19 of 2014 on the file of the learned Fast Track Judicial Magistrate No.II, Erode.



2. The learned Senior Counsel appearing for the petitioner submitted that the petitioner is the sole accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. He further submitted that there is no legally enforceable debt covered under the

cheque, since the goods delivered over the petitioner were returned back to the respondent on 03.10.2013 and the said goods duly received by him. After receipt of the entire goods, the cheque which was given as security, was presented and filed this present vexatious and false complaint.

2.1. He further submitted that the petitioner had a business transaction with the respondent to the extend of Rs.6,55,046/- towards purchase of textile materials, by the invoice dated 12.02.2013. The goods were delivered to the petitioner on 14.02.2013. On receipt of the goods the petitioner issued post dated alleged cheque for the said sum through agent by name M.Krishnakumar. The good were not in conformity with the terms of the order placed by the petitioner and the goods were totally defective and unusable. Therefore, it was duly informed to the respondent's agent namely M.Krishnakumar. Though it was informed to the respondent, the cheque was presented for collection. Since the goods were defective and unusable, the petitioner issued letter to stop payment of the alleged cheque. Therefore, it was returned dishonoured for the reason 'Stop payment'. Thereafter, by the letter dated 03.10.2013, the agent of the respondent agreed to take back the goods. Accordingly, the entire goods were returned to the respondent and the same was duly received on 04.10.2013. After receipt of the goods, the entire transaction came to an end. Even then, the respondent presented the alleged cheque on 26.09.2013, without any instructions by the petitioner and it was returned for the reasons that the payment stopped. Therefore the learned Senior Counsel contended that there is no legally enforceable debt covered under the cheque in question and as such there is absolutely no liability to the petitioner to pay the cheque amount. Further he submitted that it was categorically replied in his reply notice dated 14.10.2013. Therefore, he prayed for quashing the complaint.

3. Per contra, the learned counsel appearing for the respondent submitted that the order placed by the petitioner to purchase of textile materials to the tune of Rs.65,55,046.20 under invoice No.1863 dated 12.02.2013. After receipt of the goods, they issued cheque for the said sum. When it was presented, the same was returned dishonoured for the reason that the payment stopped. All the points raised by the petitioner are involved in question of facts and as such, it is liable to be established only during the trial. Therefore, he sought for dismissal of this petition.

4. Heard Mr.S.Subbiah, learned Senior Counsel appearing for the petitioner and Mr.S.Dhanasekaran, learned counsel appearing for the respondent.

5. The complaint filed by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act against the petitioner alleging that the petitioner purchased textile goods from the respondent on the credit

basis. On receipts of the goods under the invoice No.1863 dated 12.02.2013, the petitioner issued cheque for the sum of Rs.6,55,046/-. When it was presented for collection, it was returned as dishonoured with an endorsement that the payment stopped by the drawer. Therefore, the respondent caused statutory notice to the petitioner to settle the amount.

6. The learned Senior Counsel appearing for the petitioner pointed out that the petitioner and the respondent had business transaction through their agent one M.Krishnakumar. In the course of business, the petitioner purchases textile materials for the sum of Rs.6,55,046/-. Thereafter, it was found that the entire goods are defective and unusable. Therefore it was duly informed to the respondent through his agent and in turn he also conceded for return of entire goods. In the mean while, the respondent presented the cheque for collection. Since the entire goods were defective one, the petitioner issued stop payment to his banker. Accordingly, the cheque was returned for the reason that the payment stopped by the drawer. Therefore there is no legally enforceable debts by the petitioner and there is absolutely no liability to the petitioner to pay any amount to the respondent/defacto complainant.

7. It is seen from the reply notice sent by the petitioner dated 14.10.2013, which reads as follows :-

*" 9. The goods supplied by your client were defective and out client made it clear to you to take*

*back the goods and only in the above circumstances out client intimated his bankers to "stop payment". While so out client is at loss to understand as to why you client has chosen to present the cheque for collection viz., on 10.08.2013 and again on 26.09.2013.*

*10. In fact on 04.10.2013 you client has taken deliver of the defective textile goods supplied by you (which were supplied under invoice No.1863 dated 12.02.2013) Hence there is no necessity at all for our client to honour the cheque bearing No.026085 dated 10.08.2013 for Rs.6,55,046/-.*

*11. Our client is not under any liability to comply with the demands made in your notice. While so the requirement made in your notice dated 07.10.2013 calling upon our client to discharge the amount due under the cheque is wholly unfounded and the threat to launch legal action under Section 138 of Negotiable Instruments Act and Section 420 of Penal Code are also meaningless and untenable. It is really unfair on the part or your client to issue the notice under reply, when you client had taken back the goods."*

It is also proved by the evidence that the agent of the respondent acknowledged the goods by the communication dated 03.10.2013, in which he categorically stated that they received the goods by lorry No.TAN 5914 vide Receipt No.6572 dated 03.10.2013 and also conceded to return the alleged cheque bearing

No.026085 dated 10.08.2013 to the petitioner, as such it is quite clear that the preset case is a clear abuse of process of law.

8. In this regard the learned Senior Counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India reported in ***(2014) 3 CTC 721*** in the case of ***Indus Airways Pvt. Ltd. and others Vs. Magnum Aviation Pvt. Ltd and another***, which reads as follows:-

> *"13. The explanation appended to Section 138 explains the meaning of the expression 'debt or other liability' for the purpose of Section 138. This expression means a legally enforceable debt or other liability. Section 138 treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The explanation leaves no manner of doubt that to attract an offence under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In other words, drawal of the cheque in discharge of existing or past adjudicated liability is sine qua non for bringing an offence under Section 138. If a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise, and material or goods for which purchase order was placed is not supplied, in our considered view, the cheque cannot be held to have been drawn for an exiting debt or*

*liability. The payment by cheque in the nature of advance payment indicates that at the time of drawal of cheque, there was no existing liability.*

*.......................................*

*19. The above reasoning of the Delhi High Court is clearly flawed inasmuch as it failed to keep in mind the fine distinction between civil liability and criminal liability under Section 138 of the N.I. Act. If at the time of entering into a contract, it is one of the conditions of the contract that the purchaser has to pay the amount in advance and there is breach of such condition then purchaser may have to make good the loss that might have occasioned to the seller but that does not create a criminal liability under Section 138. For a criminal liability to be made out under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. We are unable to accept the view of the Delhi High Court that the issuance of cheque towards advance payment at the time of signing such contract has to be considered as subsisting liability and dishonour of such cheque amounts to an offence under Section 138 of the N.I. Act. The Delhi High Court has traveled beyond the scope of Section 138 of the N.I. Act by holding that the purpose of enacting Section 138 of the N.I. Act would stand defeated if after placing orders and giving advance payments, the instructions for stop payments are issued and orders are cancelled. In what we have discussed above, if a cheque is issued as an advance payment for purchase of the goods* *and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise and material or goods for which purchase order was placed is not supplied by the supplier, in our considered view, the cheque cannot be said to have been drawn for an existing debt or liability."*

9. The above judgment is squarely applicable to the case on hand and it is held that if the cheque is issued as an advance payment for the purchase of goods and for any reason the purchase order is not carried to its logical conclusion either because of its cancellation or otherwise and material or goods for which purchase order was placed is not supplied by the supplier, the cheque cannot be said to have been drawn for an existing debt or liability.

10. Here admittedly, the goods supplied by the respondent are defective and unusable. The entire goods were returned and the same were also duly received and acknowledged by the respondent/defacto complainant. Therefore there is no existing debt or liability by the petitioner to the respondent herein. Therefore, it is nothing but clear abuse of process of law, as such the complaint cannot be sustained against the petitioner.

11. In view of the above discussions, this Criminal Original Petition stands allowed and the proceedings in S.T.C.No.19 of 2014 on the file of the learned Fast Track Judicial Magistrate No.II, Erode is hereby quashed. Consequently, connected miscellaneous petition is closed.

27.02.2019

Internet:Yes/No
Index :Yes/No
Speaking/Non speaking order

rts

To

The Fast Track Judicial Magistrate Court II,
Erode

**G.K.ILANTHIRAIYAN, J.**

rts

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and M.P.No. 1 of 2014



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