

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.358 of 2014
and
M.P.No.1 of 2014

1.P.Senthilkumar
2.Shoba

... Petitioners

Vs.

K.Kuppusamy

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the case in S.T.C.No.475/2013 on the file of the Fast Track Court (Magisterial Level) No.II, Erode and quash the same.

For Petitioner : Mr.I.C.Vasudevan

For Respondent : No appearance

ORDER

This petition has been filed to to call for the records pertaining to the case in S.T.C.No.475/2013 on the file of the Fast Track Court (Magisterial Level) No.II, Erode and quash the same.

2. The crux of the matter is that the respondent filed complaint as against the petitioner for the alleged offences under Section 138 of Negotiable Instrument Act on the allegation that the petitioner entered in to an agreement for the house construction on 20.01.2012. On the basis of the same, the respondent completed the works upto concrete level and to discharge the duty, the petitioner issued a cheque for a sum of Rs.7 lakhs, but the same was returned dishonoured for the reason "funds insufficient" on 08.12.2012. The respondent issued statutory notice on 07.01.2013 and the same was also returned for the reason refused by the petitioner. Hence, the respondent filed the complaint.

3. The learned counsel for the petitioner would submit that the respondent filed complaint as against the petitioner for the alleged offences under Section 138 of The Negotiable Instruments Act on the allegation that the petitioner entered in to an agreement for the house construction on 20.01.2012. On the basis of the same, the respondent completed the works upto concrete level and to discharge the duty, the petitioner issued a cheque for a sum of Rs.7 lakhs, but the same was returned dishonoured for the reason "funds insufficient" on 08.12.2012. The respondent issued statutory notice on 07.01.2013 and the same was also returned for the reason refused by the petitioner. Based on the complaint the case was taken cognizance in STC.No.475 of 2013 by the learned Fast Track Court (Magisterial Level) No.II, Erode. He further submitted that the cheque was presented for collection on 07.12.2012 and the said cheque was returned by the bank by intimation dated 08.12.2012 for the reason insufficient funds. As per the provision under Section 138 of Negotiable Instrument Act, within the period of 30 days from date of returning of cheque, statutory notice shall be issued whereas the respondent sent statutory notice dated 07.01.2013 only on 08.01.2013. Therefore the statutory notice was not issued in time as contemplated under Section 138 of The Negotiable Instruments Act. Therefore, he prayed for quashing of the entire proceedings in STC.No.475 of 2013.

4. Though notice was served to the respondent, no one appeared.

5. Heard the learned counsel for the petitioner.

6. The respondent filed a private complaint for the offences under Section 138 of The Negotiable Instruments Act as against the petitioner herein. The case of the respondent is that the petitioner issued a cheque for a sum of Rs.7 lakhs, but the same was returned dishonoured for the reason "funds insufficient" on 08.12.2012. The respondent issued statutory notice on 07.01.2013 and the same was also returned for the reason refused by the petitioner. Admittedly, the statutory notice was issued as contemplated under Section 138 of The Negotiable Instruments Act on 08.01.2013. Though the notice was dated 07.01.2013, it was registered only on 08.01.2013 and as such it has to be taken as the notice was issued only on 08.01.2013. In this regard, it is relevant to extract the provision under Section 138(b) of the Negotiable Instruments Act, 1881.

"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 thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid"

7. As per the above provision, the respondent shall issue statutory notice within a period of 30 days from the date of returning of the cheque. Here, admittedly the respondent / defacto complainant sent a statutory notice by registered post only on 08.01.2013. The statutory period of 30 days falls on 07.01.2013 itself. Therefore beyond 30 days, the respondent issued statutory notice and it is invalid under the provisions of Section 138 of the Negotiable Instruments Act. On this ground alone, the complaint cannot be sustained further.

8. In view of the above discussion, this Criminal Original Petition is allowed. Accordingly the case in S.T.C.No.475 of 2013 on the file of the learned Fast Track Court (Magisterial Level) No.II, Erode is quashed. Consequently, the connected miscellaneous petitions are closed.

pds/lok

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To
The Fast Track Court
(Magisterial Level) No.II,
Erode.

Crl.O.P.No.358 of 2014 and
M.P.Nos.1 & 2 of 2014

VD(CO)
Kak(28/03/2019)

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