IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.17803 of 2014 and
M.P.No.1 of 2014

1.Insulation House,
rep. by Meenakshi Davey,
Partner, New No.17, Melony Road,
Ground Floor, B&C Rear Block,
Oakland Apartment,
T.Nagar, Chennai-17
2.Meenakshi Davey
3.Chandrakant Davey
4.Prakash R Davey ... Petitioners

Vs.

Pramod Kumar Daga ...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records and quash the complaint against the petitioner in C.C.No.2493 of 2013 pending trial on the file of the learned Fast Track Metropolitan Magistrate No.IV, George Town, Chennai.

For Petitioners : Mr.A.Thirumaran

For Respondent : No Appearance

ORDER

This petition has been filed to quash the proceedings in C.C.No.2493 of 2013 on the file of the learned Fast Track Metropolitan Magistrate-IV, George Town, Chennai.

2. Mr.A.Thirumaran, the learned counsel for the petitioners submits that the petitioners are accused in the complaint filed by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. The respondent filed complaint alleging that the first accused is the partnership firm represented by the second petitioner and the second and third petitioners are partners of the first petitioner. The fourth petitioner is mandate holder and had

purchased copper materials on various invoices on various dates. The outstanding was Rs.13,65,257/- in which a cheque was issued for sum of Rs.4,73,575/- bearing No.970858 dated 07.05.2013 drawn on South Indian Bank Limited. The said cheque was presented for collection and the same was returned dishonoured as 'payment stopped'. Thereafter a statutory notice was issued and without repaying the said amount, reply notice was sent with false particulars. Therefore, the respondent lodged a complaint and the same was taken cognizance for the offence under Section 138 of Negotiable Instruments Act in C.C.No.2493 of 2013 by the learned Fast Track Metropolitan Magistrate-IV, George Town, Chennai.

3. The learned counsel for the petitioner would further submit that to take cognizance for the offence under Section 138 if Negotiable Instruments Act, cheque must have been issued in discharge of legally enforceable debt or liability. The petitioners never issued a cheque in discharge of any legally enforceable liability. In fact, the said cheque in question was issued to settle the invoice No.3465 dated 18.07.2008 whereas the said cheque was presented for collection only on 07.05.2013. Therefore, liability is time barred and it cannot be legally enforced and therefore it is deemed that cheque in question has not been issued in discharge of legally enforceable debt. Further he submitted that the alleged cheque was issued as early as March 2010 and issued stop payment to the banker as early as on 01.06.2010. Further he submitted that the alleged cheque was presented only on 07.05.2013 that too after a period of three years from the date of issuance of cheque. Further he submits that the same respondent complainant filed another complaint in C.C.No.3498 of 2011 with the alleged cheque for a sum of Rs.13,65,257/- and it is pending. When it being so, there is absolutely no possibility that the petitioners would have issued the present alleged cheque in the year 2013.

4. He further submitted that there is absolutely no specific allegations or averments as against the second and third petitioners herein and all the averments and allegations are vague and bald. Therefore, the complaint cannot be sustained as against the petitioners. Further submitted that the second and third petitioners are not signatory to the cheque. Even as per the allegations, it is also to be noted that the complaint filed for the offence only under Section 138 of Negotiable Instruments Act. When it being so, there cannot be any other accused persons namely partners of the first accused partnership firm. Therefore, the complaint is not at all maintainable as against the other persons. Further submitted that in fact the petitioners already issued reply notice on 24.05.2013 for the statutory notice issued by the respondent. The respondent categorically denied the issuance of cheque for

the legally enforceable debt and further stated that the impugned cheque in this case has been handed over to the respondent as early as on 31.03.2010 to show as security to prove their credit worthiness. It is also brought to the knowledge of the respondent by the earlier reply notice dated 10.10.2011 in pursuant to C.C.No.3498 of 2011. Even then, the respondent presented the cheque and lodged the present complaint. Therefore, he sought for quashment of the entire proceedings in C.C.No.2493 of 2013.

5. Heard, Mr.A.Thirumaran, the learned counsel for the petitioners. Though notice was served, none appeared on behalf of the respondent.

6. The petitioners are accused in C.C.No.2493 of 2013 having taken cognizance for the offences under Section 138 of Negotiable Instruments Act. The respondent lodged the complaint alleging that the second and third petitioners are partners of the first petitioner and the fourth petitioner is mandate holder. They purchased copper materials. Towards partial settlement, they issued cheques and it was dishonoured and returned as 'payment stopped'. Hence, the complaint.

7. Admittedly, the complaint is only for the offences under Section 138 of Negotiable Instruments Act. Though all the partners have been impleaded as accused, the complaint is not filed for the offences under Section 138 of Negotiable Instruments Act read with Section 141 of Negotiable Instruments Act to all the partners. The respondent already filed the complaint in C.C.No.3498 of 2011 as against the petitioners for the offences under Section 138 of Negotiable Instruments Act in respect of cheque bearing No.970859. The present complaint has been filed in respect of the alleged cheque bearing No.970858. As per the complaint, the cheque was issued on 07.05.2013 whereas subsequent number of cheque was issued on 21.09.2011 in which the earlier complaint filed in C.C.No.3498 of 2011. It is also seen from the reply notice of the petitioners wherein specifically averred that the alleged cheque in the complaint was issued on 31.03.2010 itself as security purpose. After receipt of the same, the respondent did not send any rejoinder to the petitioners. Therefore, it shows both the cheques were issued as security in the year 2010 itself. The alleged cheque was presented only on 07.05.2013 and filed the present complaint.

8. Further the learned counsel for the petitioners pointed out that the petitioners already issued stop payment advice to their bank on 01.06.2010 itself and specifically mentioned the alleged cheque bearing No.970858. Accordingly, on presentation of the said cheque the banker returned the same to

the respondent as 'payment stopped'. According to the offences under Section 138(b), there must be a cheque issued for the discharge of legally inforceable debt or other liability. In this case, the cheque in question was issued in discharge of time barred debt. Therefore, it cannot be said that the time barred debt is legally enforceable debt.

9. In this regard, the learned counsel for the petitioners relied upon the Judgment in the case of K.Kumaravel Vs. R.P.Rathnam reported in 2011 STPL (DC) 711 MAD, wherein it is held as follows:

> "15. To attract liability under Sec.138 of the Negotiable Instruments Act, cheque should have been drawn to discharge a legally enforceable debt or liability. In other words if a cheque has been given not for a legally enforceable debt or liability, the court cannot come to the conclusion the drawer of the cheque has committed an offence. There can be an acknowledgement for a time barred debt, but drawing of a cheque itself is not an acknowledgement unless the debt was enforceable on the date of issuance of a cheque. Sec. 139 reads as follows:
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> 16. ***
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> 17. There is always a presumption of liability under Sec.139, however, it is also a rebuttable presumption. In 1997 2 Crimes 658 (Giridhari Lal Rathi Vs. P.T.V.Ramanujachari and another), it is held that by issuance of the cheque, the limitation for realising the loan amount cannot be taken as extended, because at the time of issuance of the cheque, a cheque should be for a legally recoverable debt. In 2002 (2) SCC 642: (AIR 2002 SC 985) (A.V.Murthy v. B.S. Nagabasavanna), cited supra, the Supreme Court held "for example if the cheque was drawn in respect of a debt or liability payable under a wagering contract, it could have been said that the debt or liability is not legally enforceable as it is a claim which is prohibited under law. Likewise, a time barred debt is also not legally enforceable debt."

10. He has also relied upon the judgment passed in the case of Sama Dharman and another Vs. S.Natarajan in Crl.O.P.(MD) No.3824 of 2012, wherein this Court has held as follows:

> "21. The learned counsel appearing for the petitioners has drawn the attention of the Court to the following decisions:

(a) In (2001) MLJ (Crl)115 Kerala (Joseph Vs. Devassia), it is held that "in the case the complainant admitted that the loan was advanced to the accused in January 1988 and the cheque was issued in February 1991. Thus, by the time the cheque was issued, the debt was barred by limitation. Since there was no valid acknowledgement of the liability within the period of limitation. It is clear from Sec.138 of the Negotiable Instruments Act that in order to attract the penal provisions in the bouncing of a cheque in Chapter XVII, it is essential that the dishonoured cheque should have been issued in discharge of wholly on the part of any debt or other liability of the drawer to the payee. The explanation to Sec.138 defines the express 'debt as liability' as a legally enforceable debt in other liability. It cannot be said that a time barred debt is a legally enforceable debt. It cannot be said that a time barred debt and it is dishonoured the accused cannot be convicted under Sec.138 of the Act."

(b) In 2009 (3) MWN (Cr.) DCC 31 (S.Kamatchi & Others Vs. M/s.Arkaa Medicament, through its Managing Director, Mr.A.Dhanasekaran and another) this Court has held that "time barred debt cannot be construed as a legally enforceable debt."

22. From the conjoint reading of the decisions referred to supra, it is easily discernible that for the purpose of invoking Section 138 r/w section 142 of the Negotiable Instruments Act, 1881, the cheque in question must be issued in respect of legally enforceable debt or other liability."

11. In the present case, the cheque in question was issued as early as in the month of March 2010 and thereafter stop payment advice was issued by the petitioners to their banker as early as on 01.06.2010. Therefore, the cheque was issued before 01.06.2010 itself to the respondent. Admittedly, the said cheque was presented by the respondent only on 07.05.2013 that too after a period of three years from the date of issuance of cheque. The value of the cheque is only three months and as such the said cheque ought to have been presented within a period of three months from the date of issuance of the cheque. The cheque became invalid and it cannot be considered for payment in due course. It is also clear that the petitioners issued post dated cheque to the respondent in the year 2010 and after a period of three years it has been presented for collection. Therefore, the cheque is not issued for a legally

enforceable debt or liability.

12. In view of the above discussions, this criminal original petition is allowed and the proceedings in C.C.No.2493 of 2013 pending trial on the file of the learned Fast Track Metropolitan Magistrate No.IV, George Town, Chennai is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Fast Track Metropolitan Magistrate No.IV,
George Town, Chennai.

2. Do Thro Chief Metropolitan Magistrate,
Chennai.

Copy TO

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.A.Thirumaran, Advocate, S.R.No. 23039

Crl.O.P.No.17803 of 2014 and
M.P.No.1 of 2014

SSV(CO)
GN(03/05/2019)