IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.25737 of 2017
and
Crl.M.P.Nos.14826 & 14827 of 2017

1.M/s.Surya Enterprises,
Through its partners,
Mr.M.Subba Rao,Mr.M.C.Subbarayudu,
Ms.M.Rajeswari, Mr.SNR.Subbaiah &
Mr.B.Sreedhar,
D.No.21-125-C-1, Bypass Road,
Jhansi Rani Hospital, Nandyal,
Andra Pradesh
2.M.Subba Rao
3.M.Subbarayudu
4.M.Rajeswari
5.SNR.Subbaiah
6.B.Sreedhar ... Petitioners

Vs.

M/s.Panasonic India Pvt Ltd.,
Godown No.3,
Opposite Yadu Gardens,
GT Karnal Road,
Alipur,
New Delhi - 110 036 ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to quash the C.C.No.751 of 2016 on the file of Hon'ble III Metropolitan Magistrate Court, at George Town, Chennai.

For Petitioners : Mr.A.Kumaraguru

For Respondent : Mr.R.Ravichandran

ORDER

This petition is filed to quash the C.C.No.751 of 2016 on the file of Hon'ble III Metropolitan Magistrate Court, at George Town, Chennai.

2. Mr.A.Kumaraguru, the learned counsel for the petitioners would submit that the petitioners are the accused /A1 to A6. The respondent is the complainant filed complaint for the offences under Section 138 of Negotiable Instruments Act. The present complaint is nothing but abuse of process of law and non application of mind. He further submits that the cause of action for the filing of the present complaint is self created and artificial and as such the complaint itself is illegal, void abinitio. The allegations made in the complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. He further submitted that the cheque drawn on Tamil Nadu Mercantile Bank is not disclosed either in the statutory notice or in the complaint. Therefore there is absolutely no cause of action to lodge the complaint as against the petitioners. Further he submitted the notice as well as return memo issued by the bankers of the respondent shows that the cheque was drawn on State Bank of India, Nandyal. But the alleged cheque is not produced either along with the complaint while at the time of presentation at New Delhi or when it is presented at Chennai. Further he submitted that there is absolutely no jurisdiction to lodge a complaint before the learned III Metropolitan Magistrate Court, Chennai. Therefore he sought for quashing of the complaint.

3. Per contra, Mr.R.Ravichandran, the learned counsel for the respondent would submit that the complainant is the company and he is engaged in the business of marketing and selling of electronic goods. The petitioners 2 to 6 are the partners of the first accused company and on behalf of the first accused, they approached the complainant that the first accused is dealing in marketing and selling of electronic goods and requested dealership as such the first accused was appointed as dealer for complainant in Nandyal, Kurnool District, Andhra Pradesh. They purchased goods from time to time and invoices were forwarded to them against the supply of goods. There was a due payable by the accused to the complainant. They issued cheque drawn on State Bank of India to the tune of Rs.13,06,720/-. The said cheque was presented at New Delhi with the bankers, viz. Standard Chartered Bank, Cannaught Place, New Delhi and the said cheque was dishonoured for the reason 'insufficient funds'. Therefore, the respondent defacto complainant issued statutory notice dated 03.06.2014 to the accused and the said notice was duly received by them. Thereafter, they did not pay the amount and as such initiated complaint under Section 138 of Negotiable Instruments Act before the Chief Metropolitan Magistrate, Patiala House Courts, New Delhi. Further submitted that the cheque was received and presented for encashment in New Delhi. Therefore the said Court

has jurisdiction to lodge a complaint. Thereafter, the said complaint was withdrawn from the said Court and presented before the learned III Metropolitan Magistrate Court, George Town, Chennai. Further submitted that the return memo issued by their banker shows cheque was drawn from State Bank of India. On the basis of return memo, the respondent / complainant issued statutory notice dated 03.06.2014 as if cheque bearing No.127976 dated 13.05.2014 drawn on State Bank of India instead of Tamil Nadu Mercantile Bank Limited. Though by reply dated 17.06.2014 by the accused, denied the fact that the cheque bearing No.127976 dated 13.05.2014 drawn on State Bank of India, Nandayal is not belong to them and false, they admitted their liability and they disputed the quantum of amount for which they purchased goods. He further submitted that the defect in the cheque is curable one and the amendment petition is still pending with the trial court. Therefore he sought for dismissal of the petition.

4. Heard Mr.A.Kumaraguru, the learned counsel for the petitioners and Mr.R.Ravichandran, the learned counsel for the respondent.

5. It is seen that the petitioners are accused, and the respondent/ complainant filed complaint under Section 138 Negotiable Instruments Act. The case of the respondent for complaint is that they appointed the first accused as one of their dealers in Nandyal, Kurnool District, Andhrapradesh in respect of electronic goods. The petitioners / accused had been purchasing goods from the complainant and invoices were forwarded to the accused against the supply of goods by the complainant, due to which the petitioners / accused persons issued cheque bearing No.127976 dated 13.05.2014 for a sum of Rs.13,06,720,/- drawn on Tamil Nadu Mercantile Bank, Nandyal Branch, Karnool District, Andhra Pradesh. The said cheque was presented for encashment by the respondent and the same was returned dishonoured for the reason 'insufficient funds'. The respondent issued statutory notice dated 13.05.2014 and stated that the cheque bearing No.127976 dated 13.05.2014 drawn on State Bank of India, Nandyal. On the basis of the said notice, they also lodged a complaint for which also they stated that the alleged cheque bearing No.127976 dated 13.05.2014 was drawn on State Bank of India, Nandyal Branch. The complaint was presented before the Chief Metropolitan Magistrate, Patiala House Courts, New Delhi. Thereafter, it was withdrawn and presented before the learned III Metropolitan Magistrate Court, George Town, Chennai. Admittedly, the defacto complainant company is having its office at Godown No.3, Opposite Yadu Gardens, GT Karnal Road, Alipur, New Delhi and also at first floor, ABW Tower, Sector 25, IFFCO Chowk, MG Road, Gurgaon, Haryana. The first petitioner / accused is having their

registered office at Nandayal, Andhra Pradesh and other petitioners are also partners of the company and having address at Nandayal, Karnool District, Andhra Pradesh whereas the complaint was originally filed before the Chief Metropolitan Magistrate, Patiala House Courts, New Delhi and subsequently it was withdrawn and presented before the III Metropolitan Magistrate, George Town, Chennai. The cheque was issued from the Tamil Nadu Mercantile Bank, Nandayal Branch, Karnool District, Andhra Pradesh and it was presented before the Standard Chartered Bank, New Delhi. At any cost, the learned III Metropolitan Magistrate, George Town, Chennai has no jurisdiction to entertain the complaint since the complainant company is situated at New Delhi from where the goods supplied to the accused persons and the petitioners / accused persons are having business at Nandayal, Karnool District, Andhra Pradesh and their cheque was also drawn from Tamil Nadu Mercantile Bank, Nandayal, Karnool District, Andhra Pradesh. Therefore, the learned III Metropolitan Magistrate, Goerge Town, Chennai has no jurisdiction to entertain this complaint.

6. The other point for consideration is that the statutory notice was issued by the respondent / complainant dated 03.06.2014 is defective one. The cheque issued by the petitioners was drawn on Tamil Nadu Mercantile Bank, Nandayal Branch, whereas the statutory notice contains the cheque bearing No127976 drawn on State Bank of India, Nandayal, Karnool District, Andhra Pradesh. The petitioners never issued any cheque from the State Bank of India, Nandayal Branch. Therefore, for the cheque bearing No.127976 dated 13.05.2014 drawn on State Bank of India, Nandayal Branch, Andhra Pradesh, no statutory notice was issued by the respondent. Therefore, there is no cause of action for cheque bearing No.127976 drawn on Tamil Nadu Mercantile Bank, Nandayal Branch issued by the petitioners to lodge a complaint for the offence under Section 138 Negotiable Instruments Act. It is also seen that the cheque was duly issued by the petitioners drawn on Tamil Nadu Mercantile Bank, Nandayal Branch for a sum of Rs.13,06,720/- for which there is no statutory notice issued by the respondent. Therefore, it is deemed as defective notice and no cause of action for filing complaint under Section 138 of Negotiable Instruments Act against the petitioners.

7. In this regard, the learned counsel for the petitioners relied upon the judgment in the case of K.R.Indira Vs. Dr.G.Adinarayana reported in AIR 2003 SCC 4689 , wherein it is held as follows:

> "9. In Suman Sethi v. Ajay K. Churiwal and Another, [2000] 2 SCC 380 it was held that the legislative intent as evident from Section 138 of the Act is that if for

the dishonoured cheque demand is not met within 15 days of the receipt of the notice the drawer is liable for conviction. If the cheque amount is paid within the above period or before the complaint is filed the legal liability under Section 138 ceases to be operative and for the recovery of other demands such as compensation, costs, interests etc. separate proceedings would lie. If in a notice any other sum is indicated in addition to the amount covered by the cheque, that does not invalidate the notice.

"10.The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence : (1) drawing the cheque by a person on account maintained by him with a banker, for payment to another person from out of that account for discharge in whole/part any debt or liability, (2) presentation of the cheque by the payee or the holder in due course to the bank, (3) returning the cheque unpaid by the drawee bank for want of sufficient funds to the credit of the drawer or any arrangement with the banker to pay the sum covered by the cheque, (4) giving notice in writing to the drawer of the cheque within 15 days of the receipt of information by the payee from the bank regarding the return of the cheque as unpaid demanding payment of the cheque amount, (5) failure of the drawer to make payment to the payee or the holder in due course of the cheque, of the amount covered by the cheque within 15 days of the receipt of the notice.

11. Strong reliance was placed by learned counsel for the appellants in Suman Sethi's case (supra) to contend that if the indication in the notice of other amounts than that covered by the cheque issued, does not as held by this Court invalidate the notice, there is no reason as to why a consolidated notice for two complainants cannot be issued. The extreme plea as is sought to be raised in this case based upon Suman Sethi's case (supra) is clearly untenable. Though no formal notice is prescribed in the provision, the statutory provision indicates unmistakable terms as to what should be clearly indicated in the notice and what manner of demand it should make. In Suman Sethi's case (supra) on considering the contents of the notice, it was observed that there was specific demand in respect of the amount covered by the cheque and the fact that certain additional demands incidental to it, in the form of expenses incurred for clearance and notice charges were also made did not vitiate the notice. In a given case if the consolidated notice is found to provide sufficient

information envisaged by the statutory provision and there was a specific demand for the payment of the sum covered by the cheque dishonoured, mere fact that it was consolidated notice, and/or that further demands in addition to the statutorily envisaged demand was also found to have been made may not invalidate the same. This position could not be disputed by learned counsel for the respondent. However, according to the respondent, the notice in question is not separable in that way and that there was no specific demand made for payment of the amount covered by the cheque. We have perused the contents of the notice. Significantly, not only the cheque amounts were different from the alleged loan amounts but the demand was made not of the cheque amounts but only the loan amount as though it is a demand for the loan amount and not the demand for payment of the cheque amount; nor could it be said that it was a demand for payment of the cheque amount and in addition thereto made further demands as well. What is necessary is making of a demand for the amount covered by the bounced cheque which is conspicuoulsy absent in the notice issued in this case. The notice in question is imperfect in this case not because it had any further or additional claims as well but it did not specifically contain any demand for the payment of the cheque amount, the non-compliance with such a demand only being the incriminating circumstance which expose the drawer for being proceeded against under Section 138 of the Act. That being the position, the ultimate conclusion arrived at by the trial Court and the High Court do not call for interference in these appeals, though for different reasons indicated by us. The appeals are, accordingly dismissed."

8. The case relied upon by the learned counsel for the petitioners squarely applies to the case on hand. Here, the bank itself is wrongly mentioned in the notice and it was also categorically denied by the petitioners by the reply notice dated 17.06.2014. It is also seen after receipt of reply notice, the complaint has been filed by the respondent again stating the alleged cheque bearing No.127976 dated 13.05.2014 drawn on State Bank of India, Nandayal Branch. The respondent did not also send any rejoinder to the reply sent by the petitioners. Therefore, the statutory notice issued by the respondent is a defective one and there is no cause of action to file the complaint against the petitioners on the cheque issued by them bearing No.127976 drawn on Tamil Nadu Mercantile Bank, Nandayal Branch, Karnool District, Andhra Pradesh.

9. In fine, this Criminal Original Petition is allowed and the case in C.C.No.751 of 2016 on the file of the Hon'ble III Metropolitan Magistrate Court, George Town, Chennai is quashed. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The III Metropolitan Magistrate,
George Town,
Chennai

+1cc to M/s.R.Ravichandran, Advocate, SR.No.16379
+1cc to Mr.A.Kumaraguru, Advocate, SR.No.15465

Crl.O.P.No.25737 of 2017 and
Crl.M.P.Nos.14826 & 14827 of 2017

Kak(25/03/2019)