



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.3848 of 2018

and

CrI.M.P. (MD) No.1870 of 2018

M.Meeran Mohideen

... Petitioner/ Sole Accused

Vs

B.Vijayakumar

... Respondent/ Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the Private Complaint in S.T.C.No.268 of 2017 pending before the Judicial Magistrate, Fast Track Court (Magisterial Level), Nagercoil, Kanyakumari District dated 23.10.2017 filed under Section 200 of the Code of Criminal Procedure Code for offences under Sections 138 and 142 of the Negotiable Instrument Act and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy
For Respondent : Mr.K.P.Narayanakumar

O R D E R

This petition has been filed to quash the proceedings in S.T.C.No.268 of 2017 pending before the Judicial Magistrate, Fast Track Court (Magisterial Level), Nagercoil, Kanyakumari District dated 23.10.2017, having been taken cognizance for the offence under Section 138 of the Negotiable Instrument Act.

2.The learned counsel appearing for the petitioner would submit that the petitioner is the sole accused. The respondent instituted the proceeding under Section 138 of the Negotiable Instrument Act on the allegation that the petitioner issued a cheque dated 10.03.2017 and when the same was presented for collection through their bank viz., Canara Bank, Ramanupthoor branch on 21.03.2017, the said was dishonored with an endorsement "Overwriting". Subsequently, the petitioner requested the respondent to wait for six months to settle the amount. Even then, the petitioner did not settle the amount as promised by him. Therefore, again, the cheque was represented for collection through the bank on 26.09.2017 and the same was returned for the reason "Instrument out dated stale" on 27.09.2017.



Immediately, he sent a statutory notice on 07.10.2017 to the petitioner and the same was also served to the petitioner on 10.10.2017. Even within 15 days, he did not settle the amount and hence, he initiated the proceedings under the negotiable instrument Act.

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3.The learned counsel appearing for the respondent would submit that the reason of returning the alleged cheque by their bank was that the instrument out dated stale. He further submitted that the cheque has been issued on 10.03.2017 and the same was initially presented on 21.03.2017 and the same was returned on 22.03.2017 with an endorsement "Overwriting". At that stage, the respondent failed to initiate any proceedings under the Negotiable Instrument Act as against the petitioner. However, thereafter, again the cheque was presented for collection on 26.09.2017 and the same was returned for the reason that instrument out dated stale. Since the cheque was issued on 10.03.2017 and the same was presented after a period of six months, the offence under Section 138 of the Negotiable Instrument Act is not at all made out as against the petitioner. Therefore, she sought for quashment of the proceedings.

4.The learned counsel appearing for the respondent would submit that initially, the cheque was presented on 21.03.2017 and the same was returned on 22.03.2017 for the reason "Overwriting" and only on the request made by the petitioner and also he promised to settle the entire amount, the cheque was not represented within a period of six months and only thereafter, he came to understand that the petitioner did not return the amount as promised by him and as such, on 26.09.2017, it was again represented and the same was returned for the reason that the instrument out dated stale. Therefore, the offence under Section 138 of the Negotiable Instrument Act is squarely made out as against the petitioner and sought for dismissal.

5.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

6.The petitioner is the sole accused and the proceedings under challenge in this petition is that the respondent lodged a complaint under Section 138 of the Negotiable Instrument Act as against the petitioner alleging that the petitioner issued a cheque on 10.03.2017 for a sum of Rs.3 lakhs towards repayment of the loan borrowed by him. The said cheque was initially presented for collection on 21.03.2017 and the same was returned on 22.03.2017 with an endorsement "Overwriting". Again, the cheque was presented only on 26.09.2017 and the same was again returned for the reason that instrument out dated stale. Therefore, admittedly, the cheque was presented after a period of 6 months. In this regard, clause (a) of the offence under Section 138 of the Negotiable Instrument



"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 arrangement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to two years, 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;"

7.In view of the same, the instrument viz., the Cheque is valid only for a period of 6 months from the date of issuance of the same. In the case on hand, admittedly, the cheque was presented only after the period of 6 months viz., 26.09.2017. Therefore, the cheque dated 10.03.2017 become invalid and hence, the entire proceedings has been vitiated and the learned Judicial Magistrate without even considering the said fact, mechanically taken cognizance and issued summons to the petitioner. Therefore, this Court is of the view that the proceedings under Section 138 of the Negotiable Instrument is liable to be quashed.

8.In view of the above, this criminal original petition is allowed and the proceedings in S.T.C.No.268 of 2017 pending before the Judicial Magistrate, Fast Track Court (Magisterial Level), Nagercoil, Kanyakumari District is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar



To

The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Nagercoil, Kanyakumari District

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-87852[F] dated
19/09/2019)

+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate (SR-88308[F] dated
20/09/2019)

Order made in
CRL.O.P (MD) No.3848 of 2018
18.09.2019

Arul
MS/04.10.2019/4P.4C