

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2020

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.Nos.18099 & 18200 of 2012

J.Suresh

... Petitioner in both Crl.O.Ps

Vs.

K.S.Ravi

... Respondent in Crl.O.P.No.18099/2012

S.Ganesan

... Respondent in Crl.O.P.No.18200/2012

Common Prayer: Petitions are filed under Section 482 of Cr.P.C., seeking to set aside the interlocutory order passed in C.M.P.Nos.10896, & 10898 of 2011 in C.C.Nos.397 & 398 of 2011 on the file of the learned Judicial Magistrate-I, Thiruvannamalai, consequently, direct the Learned Judicial Magistrate-I, Thiruvannamalai to conclude the trial of C.C.Nos.397 & 398 of 2011 forthwith.

For Petitioner : Mr.J.Kumaran

For Respondent : Mr.R.Sunil Kumar

COMMON ORDER

These petitions have been filed by the petitioner to set aside the interlocutory order passed in C.M.P.Nos.10896 & 10898 of 2011 in C.C.Nos.397 & 398 of 2011 on the file of the learned Judicial Magistrate-I, Thiruvannamalai, consequently, direct the Learned Judicial Magistrate-I, Thiruvannamalai to conclude the trial of C.C.Nos.397 & 398 of 2011 forthwith.

2.The petitioner herein is the complainant and the respondents herein are the accused.

3.The case of the petitioner is that the respondents have issued cheque bearing No.271684 dated 23.06.2011 for business transaction to the petitioner. The said cheque was not honoured and the same was returned by the drawer's banker situated in Cuddalore. Thereafter, the petitioner issued a statutory legal notice to the respondents and filed a complaint

under Section 138 of Negotiable Instrument Act before the learned Judicial Magistrate-1, Thiruvannamalai in C.C.Nos.397 & 398 of 2011. The learned Judicial Magistrate-I, Thiruvannamalai after taking cognizance issued summons to the respondents / accused. The respondents having received the summons, filed a petition under Section 202 Cr.P.C. questioning the territorial jurisdiction to entertain the said complaint. The learned Judicial Magistrate-I, allowed the said petition filed by the respondent and closed the complaint without deciding the final stage. Aggrieved by the said order, the petitioner is before this Court seeking the relief as prayed for.

3.The issue involved in the present case is whether the learned Judicial Magistrate-1, Thiruvannamalai has jurisdiction to entertain the said complaint or not?.

4.The learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court reported in (2014) 2 SCC in Devendra Kishanlal Dagalla Vs. Dwarkesh Diamonds Private Limited and others in Criminal Appeals Nos.1997-98 of 2013 dated 25.11.2013. The relevant portion of the judgment is extracted hereunder:

"16. Section 201 Cr.P.C., as noticed earlier, can be applied immediately on receipt of a complaint, if the Magistrate is not competent to take cognizance of the offence. Once the Magistrate taking cognizance of an offence forms his opinion that there is sufficient ground for proceeding and issues summons under Section 204 Cr.P.C., there is no question of going back following the procedure under Section 201 Cr.P.C. In absence of any power of review or recall the order of issuance of summons, the Magistrate cannot recall the summon in exercise of power under Section 201 Cr.P.C. The first question is thus answered in negative and in favour of the appellant.

17.The question concerning the jurisdiction of Magistrate to issue summons fell for consideration before this Court in M/s. Escorts Limited vs. Rama Mukherjee(Criminal Appeal No.1457 of 2013), 2013 (11) Scale 487. In the said case the Court noticed the earlier decision in K. Bhaskaran vs. Shankaran Vaidhyam Balan & Anr., (1999) 7 SCC 510. In the light of the language used in Section 138 of the Act, the Court found five components in Section 138 of the Act, namely,

- (1) drawing of the cheque;
- (2) presentation of the cheque to the bank;
- (3) returning the cheque unpaid by the drawee bank;
- (4) giving notice in writing to the drawer of the cheque

demanding payment of the cheque amount; and
(5) failure of the drawer to make payment within 15 days of the receipt of the notice.

After saying so, this Court held that offence under Section 138 of the Act can be completed only with the concatenation of all the above components and for that it is not necessary that all the above five acts should have perpetrated at the same locality; it is possible that each of those five acts were done at five different localities, but a concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Act.

14. Having noticed the aforesaid provisions, this court in Escorts Ltd. held as follow:

"4. It is apparent, that the conclusion drawn by the High Court, in the impugned order dated 27.4.2012, is not in consonance with the decision rendered by this Court in Nishant Aggarwal vs. Kailash Kumar Sharma, [2013(7) Scale 753]. Therein it has been concluded, that the Court within the jurisdiction whereof, the dishonoured cheque was presented for encashment, would have the jurisdiction to entertain the complaint filed under Section 138 of the Negotiable Instruments Act.

5. In addition to the judgment rendered by this Court in Nishant Aggarwal's case, another bench of this Court has also arrived at the conclusion drawn in Nishant Aggarwal's case, on the pointed issue under consideration. In this behalf, reference may be made to the decision rendered in FIL Industries Limited vs. Imtiyaz Ahmed Bhat, Criminal Appeal No. 1168 of 2013 (arising out of SLP (Crl.) No. 8096 of 2012), decided on 12.8.2013. This Court in the above matter held as under:

"2. The facts very briefly are that the respondent delivered a cheque dated 23rd December, 2010 for an amount of `29,69,746/- (Rupees Twenty Nine lakhs sixty nine thousand seven hundred forty six only) on Jammu and Kashmir Bank Limited, Branch Imam Saheb, Shopian, to the appellant towards some business dealings and the appellant deposited the same in UCO Bank, Sopore. When the cheque amount was not encashed and collected in the account of the appellant in UCO Bank Sopore, the appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 before the Chief Judicial Magistrate, Sopore. The respondent sought

dismissal of the complaint on the ground that the Chief Judicial Magistrate had no territorial jurisdiction to entertain the complaint. By order dated 29th November, 2011, the learned Chief Judicial Magistrate, Sopore, however, held that he had the jurisdiction to entertain the complaint. Aggrieved, the appellant filed Criminal Miscellaneous Petition No. 431 of 2011 under Section 561A of the Jammu and Kashmir Criminal Procedure Code and by the impugned order dated 2nd June, 2012, the High Court quashed the complaint saying that the Court at Sopore had no jurisdiction to receive and entertain the complaint.

4. We have heard learned counsel for the parties and we find that in *K. Bhaskaran v. Sankaran Vidyabalan and Another*, (1999) 7 SCC 510, this Court had the occasion to consider as to which Court would have the jurisdiction to entertain the complaint under Section 138 of the Negotiable Instruments Act and in paras 14, 15 and 16 of the judgment in the aforesaid case held as under:-

"14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the said offence: (1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Returning the cheque unpaid by the drawee bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at 5 different localities. But concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Act. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

178(d) Where the offence consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

5. Mr. Sunil Kumar, learned counsel appearing for the respondent did not dispute the decision held by the Hon'ble Apex Court.

6.In view of the categorical decision held by the Hon'ble Apex Court, the complaint returned by the Trial Court is unsustainable one. Accordingly, the Interlocutory orders passed in C.M.P.Nos.10896 & 10898 of 2011 in C.C.Nos.397 & 398 of 2011 are set aside. The matters are remanded back to the learned Judicial Magistrate-I, Thiruvannamalai to restore the same into their file and try the cases and conclude the trial in C.C.Nos.397 & 398 of 2011 in accordance with law and complete the trial within a period of six months from the date of receipt of a copy of this order.

7.Accordingly, these criminal original petitions stand allowed. Consequently, connected miscellaneous petition if any is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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TO:

The Judicial Magistrate No.1,
Thiruvannamalai.

CRL.OP.NO.18099 & 18200 of 2012

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