

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 10.02.2020	Delivered on 15.02.2021
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.OP No.609 of 2018
in
CrI.MP No.188 of 2018

1. M/s.Sai Infra Equipment's Private Limited,
Represented by its Director Mr.K.Elango.

2. Mr.K.Ilango
Director
both are at
No.1, Sai Avenue, Green Glen Layout,
Outer Ring Road, Bellandur,
Bengaluru - 560 103

... Petitioners/Accused 1 & 2

.Vs.

M/s.L&W Constructions Private Limited,
8/3-1, Pentafoord Tower, Langford Road,
Bangalore- 560025,
Represented by Mr.Madhusuthanan R

... Respondent/Complainant

PRAYER: Criminal Original petition has been filed under
Section 482 of Cr.PC to quash the complaint in C.C.No.5724 of
2017 on the file of the learned Metropolitan Magistrate Fast
Track Court I, Allikulam, Egmore, Chennai.

For Petitioner : Mr.S.Karthikeyan

For Respondents: Mr.K.P.Anantha krishna

O R D E R

This Criminal Original petition has been filed seeking
to quash the proceedings pending before the Court below in
C.C.No.5724 of 2017.

2. The respondent has filed a complaint against the
petitioners for an offence under Section 138 of the Negotiable
Instruments Act (herein after called as the "Act"). The

petitioners have approached this Court seeking to quash the proceedings mainly on the ground that a defective notice was issued by the respondent under Clause (b) of the proviso to Section 138 of the Act. Therefore, according to the petitioners, the complaint itself is not maintainable.

3. The learned counsel for the petitioners brought to the notice of this Court the legal notice dated 13.02.2017, issued by the respondent and specifically relied upon the following portions in the notice, which are extracted hereunder.

In discharge of the liability to refund the Advance payment upon termination of the Agreement by our client, a cheque issued by Sai bearing No.107505000854 dated 4 January 2017 drawn on ICICI Bank, Sarjapur Road Branch, Bengaluru, for INR 75,00,000 was presented for realisation by our client on 2 February 2017 with their bankers DBS Bank, Anna Salai, Chennai. The subject cheque has been issued by you in the capacity as a Director and authorised agency of Sai in the usual course of the business and day to day affairs of the company. The said cheque was dishonoured with endorsement "Funds Insufficient" on 3 February 2017. A cheque return memo dated 3 February 2017 has been issued by DBS Bank with an endorsement funds insufficient" which was received by our client on 6 February 2017.

We, therefore, on behalf of our client above named, hereby demand payment of the aforementioned amount of INR 75,00,000 (Rupees Seventy Five lakhs only) within fifteen (15) days from the date of receipt of this notice by you, failing which you shall be deemed to have committed an offence within the meaning of Section 138 r/w 141 of the Negotiable Instruments Act, 1881.

Take note that this is a statutory notice issued under Section 138 of the Negotiable Instrument Act, 1881.

4. The learned counsel for the petitioners also brought to the notice of this Court the reply notice dated 02.03.2017 issued by the petitioners and relied upon the following portions in the reply notice, which is extracted hereunder:-

iii. Be that as it may, my client specifically states that he has not issued cheque bearing No.107505000854 dated 04.01.2017 drawn on ICICI Bank, Sarjapur Road Branch, Bengaluru to your client upon termination of Agreement (i.e Post 11.04.2016). My client states that his bank documents do not depict having issued the said cheque bearing No.107505000854 much less any

cheque subsequent to termination of Agreement. Since my client has not been allotted with cheque containing series 107505000854 by his banker, there was no occasion for him to issue the said cheque.

5. The learned counsel for the petitioners also brought to the notice of this Court the relevant portions in the complaint, which is extracted hereunder:-

6. That towards repayment of the acknowledged debt, the second accused being the authorised signatory of the first accused issued the cheque in favour of the complainant from the ICICI Bank account bearing number 107505000854 held by the first accused. The Accused had issued the cheque bearing No.508684 dated 04.01.2017 drawn on ICICI Bank, Sarjapur Road branch, Bengaluru for a sum of INR 75,00,000. This cheque was signed by the second accused for and on behalf of the first accused.

6. The learned counsel for the petitioners submitted that the statutory notice issued under Clause (b) of the proviso to Section 138 of the Act referred to a cheque number, which was denied by the petitioners in the reply notice and in the complaint, a different cheque number has been mentioned. Therefore, according to the petitioners, the defective notice is fatal to the maintainability of the complaint and the same has to be quashed.

7. The learned counsel for the petitioners also placed reliance upon the judgement of this Court in [Sukanthi Vs. Jothi Vasathalakshmi] in CDJ 2013 MHC 4655. The relevant portions in the judgement are extracted hereunder:-

8. A perusal of the statutory notice dated 22.08.2008 would disclose that the date of the cheque name of the bank in which it was drawn, has not been disclosed. The issuance of a statutory notice is not an empty formality and the drawer of the cheque is put on notice to make the payment within 15 days from the date of receipt of the notice. The defects in the notice were pointed out in the reply sent through a lawyer on behalf of the accused and though the complaint refers to the said reply, she brushed aside the stand taken in the reply by stating that the allegations are vague and unsubstantiated.

9. In the considered opinion of the court, in the absence of relevant materials particulars in the statutory notice, the accused has been put to prejudice and at the earliest point of time, while sending the reply, it was also pointed out that the statutory notice is bereft of material particulars. In the considered opinion of the Court, the non-stating

of relevant particulars such as date of cheque, the bank in which it was drawn are vital to the case of the complainant.

8. The learned counsel for the petitioners also placed reliance upon the judgement of this Court in [Mohamad Irfan Vs.Velukannan] in CDJ 2017 MHC 2017. The relevant portions in the judgement are extracted hereunder.

37.Be that as it may, in the instant case, even though the Appellant/Complainant, at paragraphs 8 & 12, in the complaint, had mentioned the cheque number as '361868' and mentioned the cheque number incorrectly as '361838' in Ex.P3 Notice, this Court is of the considered view that there is no mist or cloud or shroud or any manner of simmering doubt in regard to the language employed in Section 138 of the Negotiable Instruments Act. Admittedly, notice will have to be read in entirety. In the present case, there was no correction notice communicated/issued on behalf of the Appellant/Complainant to the Respondent/Accused. Also, considering the fact that the supply of chickens by the Appellant/Complainant to the Respondent/Accused is a running transaction, the mistake that had occurred in Ex.P3 Notice pertaining to the cheque number cannot be said to be an ancillary/ incidental or irrelevant/immaterial one, because of the fact that the issuance of Cheque Ex.P1 was not the only one transaction between the parties. Certainly, the incorrect mentioning of the cheque in Ex.P3 Notice is not fulfilling the requirement under Section 138(b) of the Negotiable Instruments Act. In as much as Ex.P3 Notice is not in conformity with Ex.P1 Cheque, as a logical corollary, the complaint filed by the Appellant/Complainant is per se not maintainable in Law.

9. Per contra, the learned counsel appearing on behalf of the respondent submitted that the number that was mentioned in the notice was the account number of the petitioners maintained at ICICI Bank. The notice specifically gave the details of the transaction and specifically mentioned the cheque amount payable by the petitioners and therefore, the same is in compliance with the requirement of Clause (b) of the proviso to Section 138 of the Act. The learned counsel further submitted that even in the reply notice issued by the petitioners, there was no denial of the sum of Rs. 75,00,000/- covered in the cheque and what was denied was the quantum of amount payable by the petitioners. The learned counsel therefore submitted that the petitioners cannot be permitted to take a hyper technical stand and there are no grounds to quash the complaint.

10. The learned counsel for the respondent placed reliance upon the following judgements, in order to substantiate his submissions:-

(a) Nalini Mohanan Vs.State of Kerala reported in 2020 SCC Online Ker 6000

(b) Nazir Ahmad Baba Vs.Nazir Ahmad Dar reported in 2018 SCC Online J&K 70

(c) Suman Sethi Vs.Ajay K Churiwal reported in 2000 2 SCC 380

(d) K.R.Indhira Vs. Dr.G.Adinarayana reported in 2003 8 SCC 300

11. This Court has carefully considered the submissions made on either side and the materials available on record.

12. The statutory notice issued by the respondent under Clause (b) of the proviso to Section 138 of the Act apart from explaining the transactions between the parties, mentioned the Account number maintained by the petitioners instead of the Cheque number. The petitioners were called upon to pay a sum of Rs. 75,00,000/- which was covered under the cheque in question. While filing the complaint, both the account number and the cheque number have been mentioned in para 6 of the complaint.

13. A catena of decisions has now settled the law to the effect that a notice which is not in conformity with proviso (b) to Section 138 of the Act, cannot form the basis of a complaint filed for an offence under Section 138 of the Act and such a complaint would not be maintainable. The object of issuing notice to the accused person is to give a chance to the drawer of a cheque to rectify his omission. For this purpose, the notice has to be read as a whole. The demand made in the notice has to cover the cheque amount. If the notice does not even fulfil this requirement, obviously such a notice would fall short of its legal requirement.

14. In the present case, it is not as if a wrong cheque number has been mentioned in the statutory notice. What was mentioned in the notice is the account number maintained by the petitioners. Instead of stating it as account number, by oversight it has been stated as cheque number. Therefore, the limited question is as to whether, this discrepancy will vitiate the complaint filed by the respondent on the ground of defective notice?

15. A careful reading of clause (b) of the proviso to Section 138 of the Act only insists for making a demand for the

payment of the cheque amount. There is not even a mandate to mention the cheque number in the Statutory notice.

16. It will be relevant to take note of the judgements of the Kerala High Court and Jammu & Kashmir High Court referred supra. The Kerala High Court in Nalini Mohanam referred supra, was dealing with a case where there was a discrepancy in the cheque number mentioned in the statutory notice and in the complaint. While dealing with such a scenario, the Kerala High Court held as follows.

16. A demand for payment of the amount of the cheque, by giving a notice in writing is sine qua non for filing a complaint for the offence under Section 138 of the Act. The emphasis given in the provision contained in Clause (b) of the proviso to Section 138 of the Act is on the demand to be made for payment of the amount of the Crl.MC.No.4255 OF 2019(B) cheque. The statute does not provide that the number of the cheque shall be mentioned in the notice. What is required is a demand, by giving a notice in writing to the drawer of the cheque, for payment of the amount covered by the cheque. The statutory provision indicates in unmistakable terms as to what the notice should contain.

17. The object of sending a notice demanding payment of the amount of the cheque is to give a chance to the drawer of the cheque to rectify his omission and also to protect an honest drawer. No form of notice is prescribed under Clause (b) of the proviso to Section 138 of the Act (See Central Bank of India v. M/s Saxons Farms : AIR 1999 SC 3607).

18. The requirement of giving notice to the drawer of the cheque is to enable him to avoid a prosecution under Section 138 of the Act. It is well settled principle of law that the notice has to be read as a whole. A notice must be construed not with a desire to find fault in it which would render it defective. It must not be read in a hyper- technical manner. It must be construed strictly but in a sensible manner (See Surendra Das v. State of Kerala : 2019 (3) KHC 105 : 2019 (2) KLT 895).

19. In Viswanathan v. Ramachandran Nair : 1996 (2) KLT 449, it has been held that, when there is only one transaction Crl.MC.No.4255 OF 2019(B) between the parties and when there is only one transaction of issuance of cheque between the parties, a mistake in the number could not mislead the drawer of the cheque and such mistake does not render the notice invalid.

20. In *Shihahbuddin Ahammad v. Krishnaraj* : 2016 (2) KHC 463: 2016 (2) KLT 473, it has been held that when the cheque number is not mentioned in the notice or when there is a mistake in the number of the cheque in the notice, the accused cannot claim that the notice is bad or not in proper form to invalidate the cause of action.

17. Likewise, the Jammu & Kashmir High Court in *Nazir Ahmad Baba* case referred supra was also dealing with a similar discrepancy and it was held as follows.

8. True it is, in the complaint the number of the cheque allegedly issued by the petitioner on 01.10.2014 has been indicated as 720550, whereas, the cheque appended with the complaint issued on 01.10.2014 bears cheque number 720526. It is equally correct that even while issuing the notice, the number of the cheque issued on 01.10.2014 was indicated as 720550. The contention of the learned counsel for the petitioner that there was no valid notice with respect to cheque number 720526 dated 01.10.2014 and therefore, there was no cause of action to maintain the complaint appears to be attractive at the first blush but on careful scrutiny, the same is not found to be tenable in law.

Complaint which was presented before the trial Court is not only a statement of fact given by the respondent but also consists of annexures appended therewith. From perusal of the annexures appended with the complaint, it would transpire that petitioner had issued two cheques, one on 07.11.2014 and other on 01.10.2014. As conceded by the learned counsel for the petitioner, there is no discrepancy with regard to cheque issued on 07.10.2014 and, therefore, the complaint can proceed with respect to the aforesaid cheque. However, regarding the cheque issued by the petitioner on 01.10.2014, undoubtedly, in the complaint, the number indicated is 720550, whereas, the cheque appended bears number 720526. Apart from this discrepancy, there is no other variation. The memo of the bank also refers to number of cheque issued on 01.10.2014 as 720526. It is, thus, evident that the first clerical error has been committed while drafting the notice which was sent through learned counsel to the petitioner on 20.12.2014. The same mistake appears to have travelled to the body of the complaint, but this Court cannot shut its eyes to the fact that the cheques appended with the complaint are allegedly issued by the petitioner which were duly presented by the respondent in his account in the

Punjab National Bank, Branch Rajpora. Both have been returned by the bank with the remarks "Insufficient funds". Taking the holistic view of the matter, the defect pointed out by the petitioner is only technical and cannot be allowed to thwart the Course of justice. Besides, vide order impugned, the petitioner has only been put on notice to appear and he would have ample opportunity to take all these pleas at the appropriate stage in the trial.

18. A careful reading of the above judgments would show that a mere mistake in the cheque numbers, by itself will not vitiate the complaints, if there is a proper demand for the cheque amount made in the statutory notice. This Court is in complete agreement with the above two decisions.

19. In the present case, the respondent is in a better footing, since there was no discrepancy or mistake in the cheque number and the number that was mentioned in the statutory notice was the account number and the number that was mentioned in the complaint was the account number and the cheque number. The account number perfectly tallied in the statutory notice and in the complaint. That apart, the statutory notice and the complaint proceeds to derive the liability of the petitioners vide a letter of undertaking dated 27.04.2015. As per this letter of undertaking, the petitioners are said to have issued a cheque for a sum of Rs. 75,00,000 lakhs. The cheque number mentioned in the letter of undertaking issued by the petitioners tallies with the cheque number found in the complaint. That apart, even the cheque amount of Rs.75,00,000/- tallies in the letter of undertaking and the complaint. Even in the reply notice, the petitioners make a reference to the agreement dated 27.04.2015 and they only contest the quantum of the liability.

20. On a totality of the entire materials placed before this Court, this Court is of the considered view that the statutory notice issued by the respondent clearly satisfies the requirements of clause (b) of the proviso to Section 138 of the Act. The Statutory notice in no uncertain terms speaks about the transaction between the parties and a demand has been made by the respondent only with respect to the cheque amount of Rs.75,00,000/-.

20. In view of the above discussion, this Court is not in agreement with the submissions of the learned counsel for the petitioner and this Court finds that the statutory notice is not defective and consequently, the complaint filed by the respondent is perfectly in order and there are no grounds to interfere with the proceedings pending before the Court below. This Court has not expressed its views on the merits of the case and it is left open to the petitioners to raise all the grounds before the Court below and in accordance with law.

21. In the result, this Criminal Original petition is dismissed and there shall be a direction to the learned Metropolitan Magistrate, Fast Track Court I, Allikulam/Egmore, Chennai, to dispose of C.C.No.5724 of 2017, within a period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

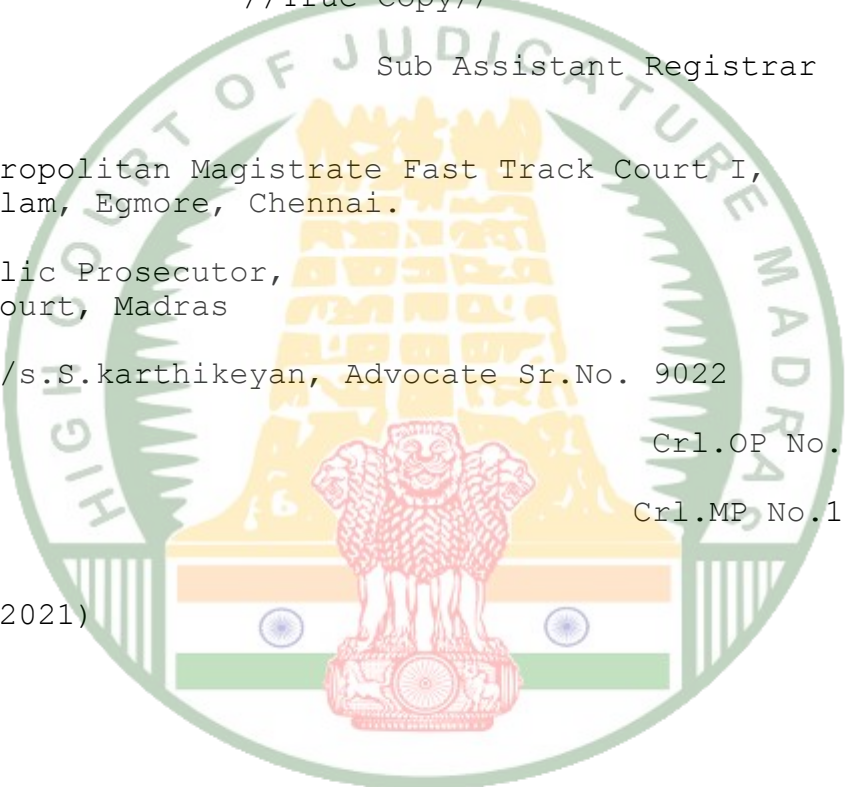
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To

1. The Metropolitan Magistrate Fast Track Court I,
Allikulam, Egmore, Chennai.
2. The Public Prosecutor,
High Court, Madras

+1 cc to M/s.S.karthikeyan, Advocate Sr.No. 9022

Cr1.OP No.609 of 2018
in
Cr1.MP No.188 of 2018

RSV(CO)
RMP(01/02/2021)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red lion capital on a base. The entire emblem is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the emblem. At the bottom, the motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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