BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 26.02.2021

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THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.508 of 2020

N.Kannan .. Petitioner/petitioner-complainant

Vs.

M.Arumugam .. Respondent/Respondent-Accused

Prayer : This criminal revision case is filed under Section 397 r/w Section 401 of Cr.P.C., to call for the records of the Fast Track Court (Magisterial Level), Pattukkottai, in C.M.P.No.362 of 2020 in Unnumbered S.T.C.No. of 2020, dated 13.08.2020, dismissing the private complaint filed by the petitioner and to set aside the same.

For Petitioner : Mr.S.Deenadhayalan

For Respondents : Mr.R.Surya Narayan

ORDER

This Criminal Revision Case has been filed to call for the records of the Fast Track Court (Magisterial Level), Pattukkottai, in C.M.P.No.362 of 2020 in Unnumbered S.T.C.No. of 2020, dated 13.08.2020, dismissing the private complaint filed by the petitioner and to set aside the same.

2.The case of the revision petitioner is that the respondent / proposed accused borrowed a sum of Rs.6,00,000/- the revision petitioner / complainant and undertake to repay the same within a period of three weeks. After three weeks, the petitioner / complainant approached the respondent / proposed accused and demanded the money back, on that date, ie. 27.01.2020, the respondent / proposed accused issued a cheque for a sum of Rs.6,00,000/-. When the cheque was presented for collection on 30.01.2020, the same was returned on 31.01.2020 with an endorsement “kindly contact drawer, drawee bank and please present again”.

3. The revision petitioner / complainant approached the petitioner and informed him the dishonour of the cheque and on his request, again, he presented the cheque after one month and the

same was again returned on 28.02.2020 with an endorsement "kindly contact drawer, drawee bank and please present again". When the revision petitioner/ complainant approached the Bank officials in person, the Bank Manager issued a certificate stating that "the account is in inoperative status for the past two years". The complainant issued a statutory notice to the respondent / proposed accused on 16.03.2020, the notice was served on the respondent/ proposed accused on 19.03.2020. After the receipt of the notice, the respondent / proposed accused neither replied nor returned the cheque amount within 15 days from the date of receipt of the statutory notice.

4. Hence, the private complaint was filed against the respondent / proposed accused under Section 138 NI Act. The trial Court refused to take the case on file and dismissed the complaint under Section 203 Cr.P.C. Against the order, the petitioner preferred this revision.

5.On the side of the revision petitioner, it is stated that knowing fully well that the respondent's "bank account is in inoperating status", he has issued a cheque to the revision petitioner / complainant. The cheque was presented before the Bank twice within the time limit. The respondent / proposed accused failed to give a reply notice. The respondent / proposed accused did not repay the amount and prayed the trial Court to be directed to take the case / private complaint on file.

6.The learned counsel for the revision petitioner relied on the Judgment of the Hon'ble Supreme Court in the case of Laxmi Dyechem V. State of Gujarat and other reported in (2012) 13 SCC 375, it is stated as follows:

> *"16.1. This Court has in the decisions referred to above taken note of situations and contingencies arising out of deliberate acts of omission or commission on the part of the drawers of the cheques which would inevitably result in the dishonour of the cheque issued by them. For instance this Court has held that if after issue of the cheque the drawer closes the account it must be presumed that the amount in the account was nil hence insufficient to meet the demand of the cheque. A similar result can be brought about by the drawer changing his specimen signature given to the bank or in the case of a company by the company changing the mandate of those authorised to sign the cheques on its behalf. Such changes or alteration in the mandate may be dishonest or fraudulent and that would inevitably result in dishonour of all cheques signed by the previously authorised signatories. There is in our view no qualitative difference between a situation where the dishonour takes place on account of*

the substitution by a new set of authorised signatories resulting in the dishonour of the cheques already issued and another situation in which the drawer of the cheque changes his own signatures or closes the account or issues instructions to the bank not to make the payment. So long as the change is brought about with a view to preventing the cheque being honoured the dishonour would become an offence under Section 138 subject to other conditions prescribed being satisfied.

16.2. There may indeed be situations where a mismatch between the signatories on the cheque drawn by the drawer and the specimen available with the bank may result in dishonour of the cheque even when the drawer never intended to invite such a dishonour. We are also conscious of the fact that an authorised signatory may in the ordinary course of business be replaced by a new signatory ending the earlier mandate to the bank. Dishonour on account of such changes that may occur in the course of ordinary business of a company, partnership or an individual may not constitute an offence by itself because such a dishonour in order to qualify for prosecution under Section 138 shall have to be preceded by a statutory notice where the drawer is called upon and has the opportunity to arrange the payment of the amount covered by the cheque. It is only when the drawer despite receipt of such a notice and despite the opportunity to make the payment within the time stipulated under the statute does not pay the amount that the dishonour would be considered a dishonour constituting an offence, hence punishable. Even in such cases, the question whether or not there was a lawfully recoverable debt or liability for discharge whereof the cheque was issued would be a matter that the trial Court will examine having regard to the evidence adduced before it and keeping in view the statutory presumption that unless rebutted the cheque is presumed to have been issued for a valid consideration. "

7.On the side of the respondent, it is stated that at the time of first return of the cheque itself, it was the duty of the revision petitioner / Complainant to issue notice within 30 days. Instead of issuing notice, the revision petitioner re-submitted the cheque for collection for the second time, without the knowledge of the respondent. There is no supporting documents filed on the side of the revision petitioner. It is further stated that no notice as to the return of the cheque on 31.01.2020 was given to the revision respondent. A case under Section 138 of Negotiable Instruments Act can be registered only when there is insufficient fund in the account not when the account is in inoperative status. Even on 28.02.2020, reason for the return is similar to that of the return dated 31.01.2020, but, the revision petitioner has chosen to enquire the Bank only on 28.02.2020 and not earlier. Since no notice was given to the respondent regarding the return dated 31.01.2020, the second presentation of cheque, without informing the respondent, is not valid and prayed the petition to be dismissed.

8.A perusal of the records reveals that the one of the grounds for the dismissal of the private complaint by the trial Court is that "under Section 138 of the Negotiable Instruments Act, the cheque has to be returned by the Bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank" and that inoperative status of an account will not be ground under Section 138 of the Negotiable Instruments Act. Though there is no specific wordings in the Negotiable Instruments Act, as to the inoperative status of a Bank account the intention of the legislation is to take necessary action against a person misusing a cheque. Hence, the dismissal of the private complaint on this ground is not valid.

9.A perusal of the records reveals that the cheque placed by the revision petitioner was returned "kindly contact the drawer and drawee bank and please present again". The contention of the revision petitioner is that when the cheque was returned for the first time, he contacted the revision respondent and only on his request, the revision petitioner represented the cheque after a period of one month. Whether notice in writing at the time of first return of the cheque is necessary can be decided only after the completion of the trial.

10.Another ground for the dismissal of the private complaint is that the private complaint is filed after the lapse of the statutory period. Regarding the limitation, the petitioner claims that due to COVID -19 situation, the revision petitioner was not able to file a private complaint in time. Lock down was declared and some relaxation in limitation was granted. Whether any such exemption is applicable to this case has to be decided by the trial Court at the time of trial.

11.Any how, case of the petitioner cannot be thrown away at the threshold. An opportunity for the revision petitioner / complainant to put forth his case has to be given in the interest of justice.

12.In the above circumstances, this Revision is allowed and the trial Court is directed to take up the case on file and to dispose the case on merits, in accordance with law, after giving opportunities for both the sides.

Sd/-

Assistant Registrar(RTI Act)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Pattukkottai.

2.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai(2 copies)

+1 CC to M/s.S.DEENADHAYALAN, Advocate (SR-7759[F] dated 01/03/2021)

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mj(CO)
TR(04.05.2021) 5P 5C