



Crl.O.P.No.25069 & 28416 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.25069 &28416 of 2015

and

Crl.M.P.No.4874 of 2016

and

M.P.Nos.1, 1 of 2015

Crl.OP.No.25069 of 2015

S.Senthil
S/o.Subramanian
6-112, Karuppanarkoil Street
Ward 6, Muthugapatti Post
Namakkal 637 405

.. Petitioner

Vs.

S.Sundar
S/o.Subramanian
304, West Pondy Road
Valavanur
Villupuram

.. Respondent

PRAYER : This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.209 of 2015 on the file of the Judicial Magistrate – III, Puducherry, and quash the same.

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For Petitioner : Mr.Murugendran

For Respondent : Mr.R.Aswin Kumar
Legal aid counsel

Crl.OP.No.28416 of 2015

S.Senthil
S/o.Subramanian
aged about 40 years
6-112, Karuppanarkoil Street
Ward 6, Muthugapatti Post,
Namakkal 637 405

.. Petitioner

Vs.

Velvizhi
W/o.SenthiKumar
aged about 32 years
1st Cross, Vengateswara Nagar
Thiruvandarkoil
Puducherry.

.. Respondent

PRAYER : This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.208 of 2015 on the file of the Judicial Magistrate – III, Puducherry, and quash the same.

For Petitioners : Mr.Murugendran

For Respondent : Mr.R.Aswin Kumar
Legal aid counsel



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COMMON ORDER

The Petitioner, who is the accused in C.C.No.209 of 2015 and CC.No.208 of 2015, for the offence under Section 138 NI Act on the complaint filed by the Respondents herein, which is pending trial before the Judicial Magistrate III, Puducherry, has filed this quash Petitions.

2.The complainant in C.C.No.209 of 2015 is one S.Sundar, S/o.Subramanian and complainant in C.C.No.208 of 2015 is one Velvizhi, W/o.Senthil Kumar. The other particulars and facts are identical. In view of the same, this Court is dispose both the Petitions by way of common order. For the sake convenience, the Petitioner and Respondent are referred as per their original nomenclature as Complainant and Accused in the complaints.

3.The gist of the complaints is that the Petitioner/Accused is owner and running a transport business in the name of “Namakkal Road Carriers” having office at No.2, T.V.R & Sons Complex, Pondy a branch office at main office at Venkateswara Complex, Namakkal. The



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Complainant/S.Sundar, was working as Branch Manager from 2012 and Complainant/Velvizhi was working as Stenographer in the Namakkal Transport, Puducherry. The nature of work is arranging transportation under commission basis, with private companies viz., (1).P.R.Acoustical and Engineering Works (P) Ltd., (2).Acoustical (P) Ltd., (3).Supreme India (P) Ltd.,, and other business entities which were situated in Thiruvandarkoil area, Puducherry. The accused was residing at Namakkal district. The payment to the lorry transporters and other expenses were paid by the complainants, as per the arrangement, the accused to pay back the complainants. In the month of July 2014, the accused informed that he is closing the branch office due to tax problem and while settling the accounts he had issued two post dated cheques to the Complainant/Senthil bearing No.945352, dated 19.08.2014, for a sum of Rs.2,03,000/- and No.945368, dated 30.08.2014, for a sum of Rs.4,00,000/-. He had also issued a post dated cheque to the Complainant/Velvizhi bearing No.945353, dated 19.08.2014, for a sum of Rs.1,20,000/-. When the above cheques presented before the Bank, the same were returned unpaid for the reason “insufficient funds”. Thereafter, legal notice dated 11.09.2014 was issued by both the



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Complainants separately, as per law and the same was returned on 22.09.2014 for the reason that no such addressee. Thereafter, following the statutory conditions complaint filed. The primary contention of the Petitioner/accused is that in both the complaints averments are identical, allegations similar, except, the first complaint filed by the branch Manager and the second complaint filed by the Stenographer of Namakkal Road Carriers, Puducherry.

4. According to the Petitioner/Accused, who is the owner of Namakkal Karthi Transport and Namakkal Road Carriers, both the complainants are employees under him. Taking advantage of the Petitioner/Accused absence in Branch Office, Puducherry, the complainants misused the cheques available in the Branch Office, filled up the same and projected a case as if, cheques were issued in discharge of liability. Further the statutory notice is not a notice as under Section 138 of NI Act. The notice does not disclose under whose instruction it is issued, by demanding to make payment of cheque in favour of “clients”. It is not in conformity to Section 138 of NI Act. Further the learned counsel submitted that as per



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Section 138 of NI Act, three conditions stipulated viz.,

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- (a) the cheque to be presented to the bank within a period of six months,
- (b) the payee or the holder in due course of the cheque, makes a demand for the payment of the said amount by giving a notice in writing, within thirty days and
- (c) the drawer of cheque fails to make payment of the said amount within fifteen days of the receipt of the said notice.

5. He further submitted that in this case, on a demurrer if it is taken, there was a liability by the Accused, then to whom the accused to make payment, in the absence of particulars of payee or the holder of the cheque. The notice is not proper, as per condition precedent under Section 138 of Negotiable Instruments Act. Hence, for completion of statutory proceedings, the complaints to be quashed. In support of his contention, he relied upon the decision of the Hon'ble Apex Court in the case of ***Rahul Builders Vs. Arihant Fertilizers & Chemical and another*** reported in **2007 (5) CTC 876**, wherein it is held that unless a notice is served in conformity



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with Proviso (b) appended to Section 138 of the Act, the complaint petition would not be maintainable. Further for the proposition that a penal provision should be construed strictly, if the demand notice not only represent the unpaid amount under cheque but also other incidental expenses like costs and interests, and in the event of notice to be vague and capable of two interpretations. In such cases, it is to be considered that notice is improper notice.

6.Learned counsel for the Petitioner further relied upon the decision of the Hon'ble Apex Court in the case of ***Jugesh Sehgal Vs. Shamsher Singh Gogi*** reported in ***(2009) 14 SCC 683*** for the principle that inherent powers of this Court is to do substantial justice when materials and records, that allowing the proceedings to continue would be, in abuse of process of law, the case can be quashed. Further he placed reliance on the decision of this Court in the case of Om Sakthi Real Agencies Vs. Vishual Technologies in Crl.OP.No.21527 of 2019, wherein this Court following the above Apex Court judgment held that the statute prescribed for service of notice, specifying the specific particulars, the same has to be followed



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strictly. Hence, in this case for non disclosure of the name of payee or holder in due course, issuance of notice is not in compliance to Section 138 (b) and (c) of NI Act. Hence, the complaint to be quashed.

7.Learned counsel for the Petitioner submitted that the object and purpose for giving notice is to inform the accused about the issuance of cheque and cheque being dishonoured and giving opportunity to the Accused to rectify the mistake.

8.Mr.S.Aswin Kumar, learned legal aid counsel appearing for the Respondents submitted that in this case, both the complainants are employees of the accused. The accused taken a technical plea that name of the payee or holder in course is not mentioned in the statutory notice. The accused not denied his liability for issuance of cheques. Though as per Section 138 (b) of NI Act, issuance of notice in writing to the drawer of the cheque is prescribed, no format is prescribed. The purpose of issuance of notice in writing, is to make aware the drawer of cheque about cheque being dishonoured, giving the drawer an opportunity to make good the cheque



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amount or give reasons. In this case, the accused not received statutory legal notice. Hence, cannot be prejudiced by taking a stand that the details of the drawer, not available. According to the complainant, Advocate notice in favour of the client with the details of cheque, such as date of cheque, amount covered in the cheque, Bank details would be sufficient, would be in compliance to Section 138 (b) of NI Act. He further submitted that if the accused being honest and his present stand in the quash petition that the cheques were misused by the complainants, he ought to have given a public complaint or issued any notice, in this regard. Admittedly, no such steps taken. On the other hand, keeping silent all these period and now making a plea that payee or holder to the cheque details not available in the statutory notice not proper, this belated defence taken to evade payment further utmost it is a disputed fact. Further the complaint is filed by the same Advocate, who issued the statutory notice will confirm that the complainants are the noticees. He further submitted that mere demand of payment is sufficient, would satisfy the condition under Section 138(b) of NI Act. He further submitted, assuming mistake committed by the lawyer, for which the complainants cannot be made to suffer. In this case, the

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Petitioner not received the notice and the same was returned, fulfilling the condition of deemed service of notice.

9.Further, a demand as required under clause (b) of Section 138 is sufficient. Further in the case of ***Pawan Kumar Ralli Vs. Maninder Singh Narula*** reported in ***(2014) 15 SCC 245***, the Hon'ble Apex Court, following the decision made in Central Bank of India's case, held that five conditions to be fulfilled in the 138 statutory notice (a) the subject amount of dishonoured cheque to be mentioned, (b) the details of Cheque numbers and date to be provided, (c) returning of Cheque by the banker and the ground to be mentioned (d) a demand for immediate payment of the amount and (e) a caution to the noticee that in case of failure, legal proceedings would be initiated.

10.In this case, all the five conditions, complied. Further, for the proposition of service of notice, the learned counsel for the Complainant relied upon the decision of the Hon'ble Apex Court in the case of ***K.Baskaran V. Sankaran Vaidhyan Balan*** reported in ***(1999) 7 Supreme***

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Court of Cases 510, wherein the Apex Court held that payee has to make demand by giving notice in writing and it is only for the requirement to complete the offence or failure of the drawer to pay the cheque amount within stipulated period. Further referred to paragraph 19 of the said judgment which is extracted hereunder:

In Black's Law Dictionary, 'giving of notice' is distinguished from 'receiving of the notice.' (vide page 621) "A person notifies or gives notice to another by taking such steps as may be reasonably required to inform the other in the ordinary course, whether or not such other actually comes to know of it." A person 'receives' a notice when it is duly delivered to him or at the place of his business.

He further submitted that the interpretation should not be made to help the dishonest evader and clips an honest payee, which would defeat the purpose of 138 NI Act. Further, submitted that if the interpretation is otherwise, it would lead to a very tenuous position as the drawer of the cheque, who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice. Hence, the notice taken to the accused address is sufficient. He further submitted that the points raised by the



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Petitioner are factual in nature, which ought to be decided only during trial and not in the quash Petition.

11.Considering the rival submissions and on perusal of the materials, it is seen that the legal notice, issued by the complainants, to the address of the accused known to them. The notice returned unserved. In the legal notice, the particulars of the cheque, presentation of the cheque to the bank, dishonour of cheque and demand for payment clearly mentioned. The accused having failed to receive the notice missed the opportunity, by refuting to the statutory notice. Admittedly, the accused had not taken any positive step to show he had informed his banker about missing of cheque, issued any notice to the complainants about apprehension of misuse of cheques available with them or given any complaint to the police in this regard. Failing to take such steps, now cannot claim that the statutory notice issued by the complainants is not in compliance of Section 138 (b) of NI Act. The points raised by the Petitioner are factual in nature, which can be decided only during trial. Hence, this Court is not inclined to entertain this Petition.

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12.This Court appreciates the strenuous efforts taken by Mr.R.Aswin Kumar, learned legal aid counsel appearing for the complainant, for thorough preparation and his effective argument made on behalf of the complainants. Finding that the Calendar Case is of the year 2014, the trial Court is directed to complete the trial within a period of three months from the date of receipt of a copy of this order.

13.In fine, with the above direction, these Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed.

11.10.2022

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To

The learned Judicial Magistrate – III,
Puducherry



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M.NIRMAL KUMAR, J.

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