



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.04.2022

Delivered on : 13.04.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.7216 of 2019

and

Crl.M.P.No.3976 of 2019

P.Muthukumar

... Petitioner/Accused

Vs.

M.Micheal

... Respondent/Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C, praying to call for the records in C.C.No.73 of 2019 pending on the file of the learned Judicial Magistrate (Fast Track Court) at Ambattur and quash the same.

For Petitioner : Mr.B.Harikrishnan

For Respondent : No appearance

ORDER

When the case is taken up for hearing, the learned counsel for the Petitioner/Accused before the learned Judicial Magistrate, Fast Track Court, Ambattur submitted that the Petitioner had filed this petition seeking to quash the criminal complaint filed by the Respondent/Complainant. He further submitted that notice was taken to the Respondent/Complainant. The name of the Respondent/Complainant is also printed in the cause-list, but no counsel had appeared on behalf of the Respondent/Complainant.

2.The learned Counsel for the Petitioner invited the attention of this Court to the Page No.1 of the typed set of papers filed along with this Petition regarding the notice issued by the Petitioner. He caused the notice on the Respondent/Complainant, the Respondent/Complainant issued a reply and based on the reply, it has been converted into the



criminal complaint. Further, the learned counsel for the Petitioner submitted that the contents of the reply notice is not as per the provision of Section 138 of the Negotiable Instruments Act, which insists upon a statutory notice. The reply notice given by the Respondent/Complainant was not caused on the Petitioner herein. It was caused on the counsel for the Petitioner. Therefore, the Respondent/Complainant had not demanded the Petitioner to settle the amount or warned of the consequences, consequentially, the Respondent/Complainant filed a complaint. Therefore, he further submitted that the complaint preferred by the Respondent/Complainant itself is not maintainable.

3. In support of his contention, he relied upon the ruling of the Hon'ble Supreme Court in the case of C.C.Alavi Haji Vs. Palapetty Muhammed & Anr., reported in (2007) 6 SSC 555 and K.R.Indira v. Dr.G.Adinarayana reported in (2003) 8 SCC 300.

4. A perusal of the judgment in K.R.Indira v. Dr.G.Adinarayana reported in (2003) 8 SCC 300 it is found that the statutory notice should contain the words that "the cheque was issued by the accused, cheque was dishonoured for want of sufficient funds or the accused had issued stop payment". Therefore, the provisions of Section 138 of Negotiable Instruments Act attracted. Within 15 days from the date of receipt of the statutory notice, if the accused fails to honour the amount in the cheque or to issue proper reply within 15 days, the complainant will be forced to file complaint after the expiry of 15 days. If those specific averments are not found, then, the notice is held defective which will affect the private complaint under Section 138 of Negotiable Instruments Act. Part of the cause of action is the issuance of notice within 15 days from the date of dishonour of cheque and next 15 days waiting for the response from the accused. Only after expiry of 15 days from the date of issuance of notice and receipt of notice, the complaint can be filed.

5. As per the reported judgment of the Hon'ble Supreme Court in the case of C.C.Alavi Haji Vs. Palapetty Muhammed & Anr., reported in (2007) 6 SSC 555, which states that if the notice issued is defective, then the complaint under Section 138 of Negotiable Instruments Act is not maintainable. The Complainant/Respondent in the case before this Court had caused notice not to the Accused/Petitioner herein but to the Counsel for the Petitioner herein and it did not contain the specific averments that within 15 days from the date of receipt of notice, the accused shall pay the amount mentioned in the cheque



or shall send reply. Since the notice was not as per the provisions of Section 138 of Negotiable Instruments Act, the accused before the learned Judicial Magistrate, Fast Track Court, Ambattur/the Petitioner herein had filed this Petition seeking to quash the complaint in C.C.No.73 of 2019 filed by the Respondent/Complainant under Section 138 of the Negotiable Instruments Act.

6.As per the ruling of the Hon'ble Supreme Court in the case of C.C.Alavi Haji Vs. Palapetty Muhammed & Anr., reported in (2007) 6 SSC 555, if the notice had been sent by the Complainant through registered post and if the notice had not been received by the accused or evaded service of notice, still, the complaint can be filed stating that the accused evaded notice. After filing of the complaint under Section 138 of Negotiable Instruments Act, the Court takes cognizance of the offences and issue summons to the accused. At that stage, the accused can seek to comply with the notice as though notice was served on him at the initial stage prior to filing of the complaint and seek the relief from the Court seeking 15 days time to comply the requirement of Section 138 of Negotiable Instruments Act either he can pay the amount or seek time for settling the dues. If he pays the amount within 15 days time or in the extended time, he can seek the indulgence of the Court that the complaint be rejected. He would contend that there was no proper service of notice.

7.In the above stated circumstances, in the case before this Court the Respondent/Complainant had caused notice but it was defective notice as it did not contain the specific averments that the Petitioner herein who was the accused before the trial Court shall comply with the notice within 15 days from the date of notice. Also it was not addressed to the Petitioner herein and it was addressed to his Counsel. Therefore, the condition under Section 138 of the Negotiable Instruments Act was not attracted to treat it as statutory notice.

8.As per Section 138 of the Negotiable Instruments Act, the part of the cause of action is issuance of notice and when the issuance of notice is defective not seeking compliance of the payment of the amount within 15 days from the date of notice, then, the complaint cannot be filed as the notice itself is defective. In this case, the notice was found defective on two grounds viz., (i) it did not contain the specific averments that the accused shall comply with the cheque amount within 15 days from the date of notice and (ii) that the notice was not addressed to the Petitioner/Accused but to it was addressed to his Counsel. Therefore, it is not a proper notice.



9. In the light of the above rulings, the arguments of the learned Counsel for the Petitioner/Accused is found acceptable and reasonable. Therefore, the complaint preferred by the Respondent/Complainant before the learned Judicial Magistrate/Fast Track Court, Ambattur, in C.C.No.73 of 2019 is quashed and this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Fast Track Court, Ambattur
Chennai.

2. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.B. Harikrishnan, advocate sr 25695.

Cr1.O.P.No.7216 of 2019

AJB (CO)
SP(13/05/2022)