



Crl.R.C.No.21 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.03.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.21 of 2020

and

Crl.M.P.No.117 of 2020

A.Durai Ramachandran

.. Petitioner

Vs.

K.Mohan Babu

..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the judgment in Crl.A.No.106 of 2018 dated 25.10.2019 on the file of the III Additional District Sessions Judge, Salem confirming the sentence imposed in the judgment dated 27.04.2018 in S.T.C.No.944 of 2016 on the file of the Judicial Magistrate No.II, Salem and to allow the above Criminal Revision.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Door locked



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ORDER

This Criminal Revision Case is directed against the concurrent findings of the Courts below dismissing the complaint preferred under Section 138 of Negotiable Instruments Act.

2 The short point for consideration in this revision case is whether the statutory notice sent to the accused returned unserved can be deemed to be service completed?. The complaint under Section 138 of N.I.Act was filed by the petitioner herein before the Judicial Magistrate II, Salem on the premise that the accused/respondent borrowed Rs.5,80,000/- on 15.03.2016 to meet out his business expenses and family expenses. He gave a post dated cheque while borrowing the money. When the cheque dated 15.04.2016 for a sum of Rs.5,80,000/- presented for collection, the same was returned for the reason “insufficient funds”. On receiving the intimation dated 04.05.2016 the complainant caused statutory notice under Section 138 of N.I.Act. The said notice dated 11.05.2016 returned with a postal endorsement “door locked”. Which he received on 25.05.2016 thereafter, the complaint was filed and taken cognizance by the Magistrate.



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3 To prove his complaint, the complainant has deposed before the Court and marked 4 documents. On the side of the accused, neither document nor oral evidence adduced. However the Trial Court dismissed the complaint on the ground that (i) the statutory notice was not duly served on the accused, (ii) the complainant has not proved his source of money to advance to the accused a sum of Rs.5,80,000/- (iii) the accused has put forth his defence that the cheque was given to one Pradeep, when the accused and Pradeep were jointly carrying on bakery business as partners. The cheque given blank to the friend of Pradeep, been misused (iv) the complainant though claims that the loan was given for expansion of the accused business and family expenses, in the cross examination, the complainant admits that he is not aware of the accused place of business.

4 Since the Trial Court dismissed the complaint, appeal was preferred before the III Additional District and Sessions Judge, Salem in C.A.No.106 of 2018. The Lower Appellate Court after re-appreciation of



evidence confirmed the judgment of the Trial Court and dismissed the appeal.

5 The learned counsel for the revision petitioner/complainant submitted that when the signature found in the cheque is admitted by the accused, it is his burden to prove that the cheque was not issued to discharge the debt amount which is found in the cheque. Having not examined witnesses or adduced documents to discharge the said burden, the Court below ought not to have been dismissed the complaint.

6 The learned counsel also submitted that the paying capacity of the holder of the cheque is immaterial once the drawer admits the signature found in the cheque. The Trial Court had erroneously observed the place of accused business not known to the complainant. In fact in the cross examination of PW.1, complainant has said he went to the business place of the accused but he found it was locked. Therefore, the Court wrongly inferred that the complainant is not even aware of the accused place of business finally.

7 Regarding the non service of statutory notice, the learned



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counsel submitted that the accused was served with Court summon in the same address. Accused received Court summon and participated in the trial, whereas when the statutory notice sent to same address earlier the accused did not receive it. The door was locked and intimation was left to the accused but he did not collect the cover from the postal department. Therefore, after waiting for the accused to collect the cover. the cover was returned on 25.05.2016. Pointing out that the statutory notice was post on 11.05.2016 and returned back unserved after 14 days, clearly indicates that the postal department has even after waiting for 14 days, the addressee did not turn up to collect the notice since, the accused evaded the receipt of notice, it should be taken as service deemed to have done. Referring the Judgment rendered by this Court in the case of ***Nandakumar Vs. N.Shanmugam*** reported in ***2019 (1) MWN (Cr.) DCC 90 (Mad)***, he draw attention of this Court to Paragraph 12 of the said judgment contended that the statutory notice deemed to have been served to the accused.

“12. It remains to be stated that though DW.2/Accused has filed Exs.D1 to D3, none of the address matched with the address found in



the Bank Passbook and hence, both the Courts below have come to the conclusion that the Accused has not updated his address in the Passbook of the Bank, in which the cheque has been issued and therefore, come to the conclusion that the plea raised by the defence stands for no reason and he cannot take advantage of his non-update of Bank Address in the Bank Passbook, accordingly, rejected that Ex.P4 was not duly served. In fact, for the very same address, as mentioned in the Ex.P4, the Court's Summon has been sent in C.C.No.1086 of 2007 and the same was served upon him and he also contested the case. Therefore, in view of the above discussion, this Court finds that the plea raised by the defence that he never resided in the address mentioned in the Complaint and Ex.P4-Notice as defective cannot be accepted and the same is hereby confirmed.”

8 This Court, on considering the submissions made by the learned counsel though substantially agrees with his arguments regarding



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the other three grounds, unable to countenance the submission made in respect of service of notice in the light of the peculiar fact in this case. The statutory notice as well as the complaint indicate the name of the accused and address as below “ K.Mohan Babu, S/o.Kannaiyan, Dr.Ambedkar Nagar, Thiruchengode, Namakkal”.

9 The learned Judicial Magistrate, after examining PW.4, and the returned cover with postal endorsement, had pointed out that the statutory notice returned not only for the reason that the door was locked, but also for the reason the address is insufficient and the door number not mentioned. Perusing the documents again, this Court finds that the address as mentioned in the complaint as well as the postal cover without door number and street number cannot be construed as complete address for service. Having not provided the door number and street number of the accused for effecting the service of notice, this Court finds no error in the finding of the Trial Court as well as the lower Appellate Court that the statutory notice was not properly served on the accused. The cause of action to lodge the complaint under Section 138 of



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Negotiable Instruments Act only arise after completion of 15 days after causing statutory notice.

10 In this case, when the statutory notice itself is not sent to the proper address of the accused, applying deemed service theory is improper. Therefore, this Criminal Revision Case stands dismissed. Consequently, the connected Criminal Miscellaneous Petition is also dismissed.

15.03.2023

Internet : Yes/No

Index: Yes/No

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To

1.The III Additional District Sessions Judge, Salem.

2. The Judicial Magistrate No.II, Salem.

Dr.G.JAYACHANDRAN, J.

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