BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 17/11/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

Crl.OP(MD)No.15277 of 2023
and
Crl.MP(MD)Nos.12116 and 12118 of 2023

M/s.Avani Karthika Shopping,
rep. by its Proprietor R.Athilakshmi
: Petitioner/Sole Accused

Vs.

M/s.Visage Holdings and Finance Private Ltd.,
represented by its Power of Attorney
M.Bharathidasan : Respondent/Complainant

PRAYER:-Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the complaint of the complainant filed under sections 138 and 142 of Negotiable Instruments Act, taken in STC No.78 of 2022 on the file of he Judicial Magistrate Court No.1 (Fast Track Court at Magisterial Level), Madurai and quash the same and pass such further or other orders.

For Petitioner : Mr.A.Ramesh

For Respondent : No appearance

ORDER

This criminal original petition has been filed seeking quashment of the case in STC No.78 of 2022 on the file of the Judicial Magistrate No.1, (Fast Track Court at Magisterial Level), Madurai.

2.**The facts in brief:-**

The de-facto complainant filed a private complaint before the trial court setting out the following averments:-

The respondent sanctioned a loan amount of Rs. 3,00,000/- to develop the business of the petitioner. An agreement was also entered into between them in loan Account ID No.TLWCS0008533. As per the agreement, the petitioner has to repay the loan amount on monthly installment basis. But she failed to comply with the terms and conditions of the agreement. Later to discharge the loan amount, she issued a cheque bearing No.036159, dated 26/07/2021 for Rs.1,22,648/- drawn on Indian Bank, Avaniyapuram Branch, Madurai. On presentation of the cheque by the respondent, it was dishonoured stating that Funds Insufficient in the account of the petitioner. Thereafter, there is no response from the petitioner. After completing the statutory formalities, he filed the above said complaint. The complaint filed by the respondent was taken on file in STC No.78 of 2022 by the trial court under sections 138 and 142 of the Negotiable Instruments Act.

3.Seeking quashment of the same, this petition has been filed by the petitioner stating that statutory notice was not issued within the time stipulated as per the Negotiable Instruments Act; There is a one day delay in sending the notice. Apart from that, it is also stated that the cheque was issued only as a security for the loan amount obtained by him. So there is no legally enforceable liability on the date of the complaint.

4.Notice was dispensed with for the respondent, since only legal issue has been raised by the petitioner.

5.As stated above, the first ground is that statutory violation in sending the statutory notice.

6.It is stated in the complaint that the cheque was dishonoured, on 30/08/2021 as 'Funds Insufficient'. Statutory notice was issued, on 29/09/2021 through registered post with acknowledgement due. It was received by the accused namely the petitioner herein, on

01/10/2021. So, this, according to the petitioner, does not satisfy the requirement of law.

7.On this aspect, now let us go to section 138 of the Negotiable Instruments Act. Section 138 of the Negotiable Instruments reads as under:-

> "***138 Dishonour of cheque for insufficiency, etc., of funds in the account.***—*Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that 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 that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of*

this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount

of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

8.Reading of the section 138 of the Negotiable Instruments Act proviso (b) stipulates that within 30 days from the date of receipt of the information from the Bank, notice must be given. Within the statutory period, notice has been issued. But it was received by the petitioner, on 01/10/2021. The date of issuance of the notice is the relevant date. Not receipt of the notice by the accused. So, this ground raised by the petitioner is completely out of place and is no legal relevancy at all. So this ground is rejected outright.

9.The second ground is that that cheque was issued as a security for the loan obtained. When the issuance of the cheque is admitted, then automatically presumption will come into play. Even the issuance of the cheque as security for the liability will attract section 139 of the Negotiable Instruments Act. So, this ground is also not available to the petitioner for quashment.

10.I find no reason to entertain this petition. Without any legal basis, this criminal original petition is filed.

11.In the result, this criminal original petition is **dismissed.** Consequently, connected Miscellaneous are closed.

17/11/2023

Index:Yes/No
Internet:Yes/No
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To,

The Judicial Magistrate No.I,
Fast Track Court at Magistrate Level,
Madurai.

G.ILANGOVAN, J

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