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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.06.2024	Pronounced on: 28.06.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.7681 of 2024
& Crl.M.P.Nos.5574 & 5575 of 2024

S.Deepalakshmi. ... Petitioner/Accused

/versus/

Arumugam. .... Respondent/Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records and quash C.C.No.525 of 2023 pending on the file of Learned Judicial Magistrate, Thirukolur and pass order.

For Petitioner : Mr.A.M.Amutha Ganesh,
for Ms.V.Jayavigneshwari

For Respondent : Mr.V.Ramamoorthy

O R D E R

The petitioner herein is the sole accused in C.C.No.525 of 2023 on the file of Judicial Magistrate, Thirukoilur. The complaint is in respect of offence under Section 138 of N.I Act. The complaint averment is that to discharge the

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liability, the cheque bearing No.10317363 drawn by the petitioner/accused from her account maintained at Federal Bank, Puducherry, for a sum of Rs.4,53,151/- returned with an endorsement "*Alternation of instrument other than date Field. Alteration corrections are prohibited under CTS*". Since the cheque issued without adequate fund, offence under Section 138 of N.I Act is made out.

2. The accused is before this Court to quash the complaint on the ground that the cheque was dishonoured for material alteration. Under Section 87 of N.I Act., cheque with material alteration becomes a void instrument. When an instrument is void, there cannot be any prosecution based on the void instrument. It is contended that the cheque as such was not issued for discharging any liability. In the course of executing railway contract work, certain work was outsourced to the complainant as Sub Contractor. A sum of Rs.8,824/- alone was due and payable to the complainant. For which, the cheque bearing No.317364 dated 23.05.2023 was issued and the same was duly honoured. Whereas, the previous cheque bearing No.317363 which was wrongly written after correction, was discarded and left without filling the name of the drawee. The complainant had misused the said cheque by filling his name

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and presented the same without there being any legally enforceable debt.

3. In support of the petition, the Learned Counsel appearing for the petitioner rely upon the following judgments.

(i). ***Veera Exports -vs- T.Kalavathy*** reported in ***2001 AIR SCW 4548.***

(ii). ***Kanaram -vs- S.Hariram*** reported in ***MANU/TN/0405/2020.***

(iii). ***Rajat Pharmachem Ltd & others -vs- State Trading Corporation of India Ltd*** reported in ***CDJ 2009 DHC 607.***

4. The Learned Counsel appearing for the respondent submitted that the in the space meant for writing the value of the cheque in words, the drawer has wrongly written the number and same was corrected by the drawer of the cheque and had initialled above it. Therefore, the correction duly acknowledged by the drawer will not amount to material alternation to attract Section 87 of N.I Act. The return of the cheque stating *"Alternation on instrument other than date field"* will attract offence under Section 138 of N.I Act. In this case, the cheque was presented for collection on 23.05.2023 and same was returned on 25.04.2024. Statutory notice was issued on 01.06.2023 which was received by the accused on 03.06.2023. The accused failed to reply or to pay the cheque

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amount as demanded under the statutory notice. Though, the return memo had stated *"Alternations on instrument other than date filed Alternation correction are prohibited under CTS"* as reason to return the cheque without honouring, it is the case of the complainant that the accused had no sufficient fund in her account while issuing the cheque. The correction duly endorsed by the drawer will not amount to material alternation. Therefore, the complainant having made out foundational case against the accused, the claim of the petitioner that the cheque is void due to material alternation is unsustainable. Further, the Learned Counsel appearing for the respondent submitted that if any alternation in the instrument made voluntarily, it cannot be construed as material alternation.

5. The short point involved in this case is whether the alternation in the subject cheque will attract Section 87 of N.I Act, if not, whether return of cheque for that reason will not attract offence under Section 138 of N.I Act.

Section 87 of the Negotiable Instrument Act, 1881 reads as below:-

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Section 87: Effect of material alteration.

Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorsee.—And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

6. The above section will apply if the following three conditions are satisfied:-

(i). Alternation must be material.

(ii). Alternation must have been done without the consent of the party.

(iii). Alternation must not have been done to carry out common intention of the original parties.

7. On testing the subject cheque, one could find that there is no material alternation in the cheque. The drawer of the cheque in the second row meant to write the value of the cheque in words, after the word Rupees, she has written

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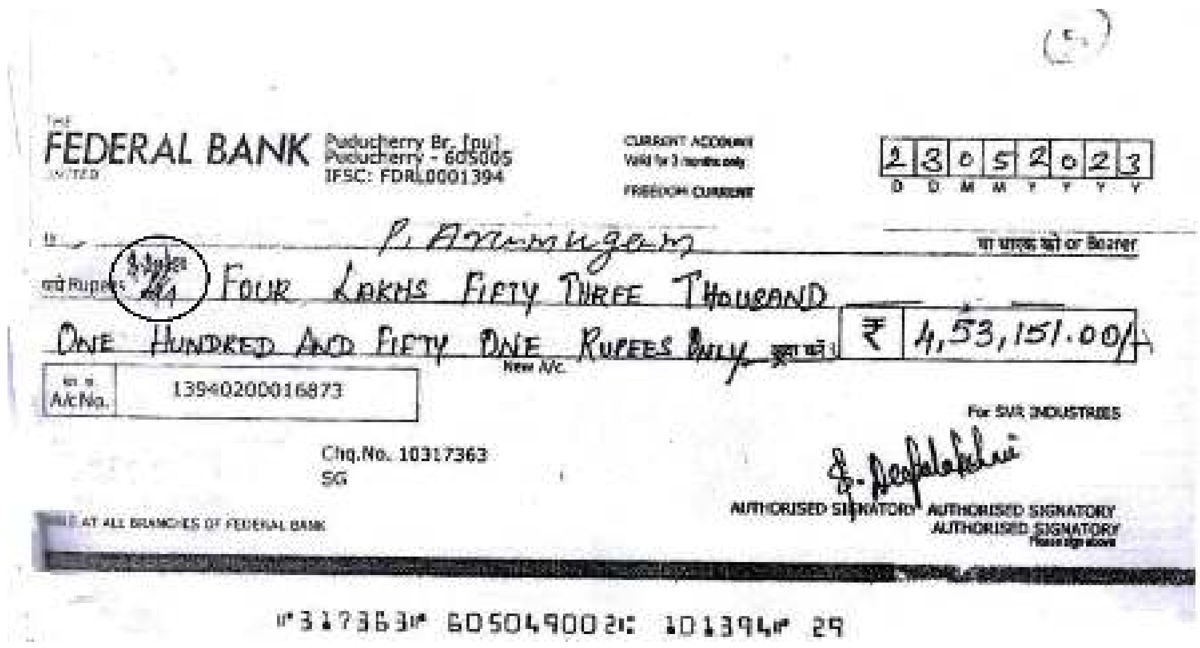
number *'4'.* Then she has scored it off and signed above that indicating that the writing of number *'4'* and scoring was done by her. After that, she had written the value of the cheque in words as "*Four Lakhs Fifty Three Thousand One Hundred and Fifty One Rupees Only"*. In the box meant for writing the value in figure, she has written Rs.4,53,151/-. Thus, it is very clear that whatever corrections made in the cheque been done voluntarily by the drawer and the said correction is not a material alternation to attract Section 87 of N.I Act.

8. The scanned copy of the cheque is placed below to visualize what the corrections made in the subject cheque and the same is encircled.


FEDERAL BANK
Puducherry Br. [pul]
Puducherry - 605005
IFSC: FDRL0001394
CURRENT ACCOUNT
FREEDOM CURRENT
23052023
P. Arumugam
or Bearer
Rupees 4 FOUR LAKHS FIFTY THREE THOUSAND
ONE HUNDRED AND FIFTY ONE RUPEES ONLY
₹ 4,53,151.00/-
A/c No. 13940200016873
For SVR INDUSTRIES
Chq.No. 10317363
SG
AUTHORISED SIGNATORY
AT ALL BRANCHES OF FEDERAL BANK
⑈317363⑈ 605049002⑆ 101394⑈ 29

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9. No doubt, from the above cheque, the name of the bearer i.e., P.Arumugam is in different handwriting and ink. These kind of cheques are known as inchoate cheque as per Section 20 of N.I Act. Such cheques are valid under law.

Section 20 of N.I Act reads as below:-

> ***20. Inchoate stamped instruments.—***
>
> *Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in 2 [India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.*

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10. The petitioner/accused claims that the cheque was not issued for discharge of any liability towards P.Arumugam/the complainant. The disputed fact regarding liability has to be tested in the trial. The burden to prove is on the parties, subject to certain presumptions.

11. The Court shall take cognizance of offence if the conditions imposed under Sections 138 and 142 of Negotiable Instruments Act are satisfied.

Section 138 of the N.I Act reads as below:-

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

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provision 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 of other liability" means a legally enforceable debt or other liability.

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12. When a cheque drawn by a person on an account maintained by him with a banker for payment of any amount to another person to discharge whole or part of debt or liability, is returned by the bank unpaid, either because of 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. To infer that the cheque was issued without sufficient fund, we always look at the memo of the bank which will disclose the reason for return. The cheque may be returned for reasons like mutilation, signature difference, insufficient fund, exceeds arrangement, stop payment, alternation etc. Even if the cheque is returned assigning reasons other than insufficient fund or exceeds arrangement ultimately what to be looked into is whether the cheque was issued by the drawer from his account without sufficient fund to honour the cheque. If the bank returns the cheque unpaid and the complainant could *prima faciely* show to the Court that the cheque was issued to discharge the liability without funds, then Section 138 of N.I Act gets attracted. To afford opportunity to drawer, the Act contemplates Statutory notice (to the accused) as a pre-requisite, before instituting the complaint. The mandatory condition to issue statutory notice to the drawer is for the drawer to explain about the circumstances under which the

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cheque maintained in his account has gone into the hands of the complainant. It is very valuable right and if the accused fails to avail that right for *prima facie* satisfaction inference could be drawn that the subject cheque is issued for discharge of liability and the same has returned unpaid due to insufficient fund.

13. If the cheque given to discharge liability and it is returned for any other reason, despite the drawer had sufficient fund in his account, then on receipt of the statutory notice, he gets an opportunity to pay the cheque amount or re-issue the cheque to avoid prosecution. Without causing reply or without paying the cheque amount or re-issuing the cheque with sufficient fund in the account, the accused cannot take advantage of the expression found in the 'return memo' and seek quash of the complaint.

14. The Hon'ble Supreme Court in catena of judgments while discussing the component to constitute offence under Section 138 of N.I Act has held as below:-

The offence get completed if it passes through the following process. (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing

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to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days from the receipt of the notice.

15. In the light of the above discussion, this Court holds that the correction made in the subject cheque is by the drawer herself and it is voluntary. Therefore it will not fall within the meaning of material alternation to attract Section 87 of N.I Act. Hence, it is a valid cheque for all purpose. The reason for return of the cheque unpaid by the Bank though mentioned as alternation in the instrument, the failure of the accused to reply to the statutory notice leads to the inference that the cheque was issued without sufficient fund in the account. The accused/petitioner has to face the trial to discharge the burden by proving that the cheque was not issued for discharge of any liability and/or was issued to discharge the liability but with sufficient fund in the account, however, the Bank has returned only for the reason of alternation found on the face of the instrument. These are factual aspect for appreciation based on evidence. Hence, the complaint cannot be quashed for reasons stated.

16. The Learned Counsel appearing for the petitioner submitted that the petitioner is a lady and her physical appearance on every hearings may be

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dispensed with except on hearings when her presence is required to answer the charge, incriminating evidence and on date of judgment. The prayer of the petitioner to dispense with her personal appearance shall be positively considered by the Court below if appropriate application is filed under Section 205 of Cr.P.C or Section 317 of Cr.P.C., as the case may be.

17. With the above observation, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

28.06.2024

Index :Yes/No.
Internet :Yes/No.
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1. The Judicial Magistrate, Tirukoilur.

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