

**(2010) 09 MAD CK 0247****Madras High Court****Case No:** Criminal R.C. No. 706 of 2007

R. Sekar

APPELLANT

Vs

K. Kasinathan

RESPONDENT

**Date of Decision:** Sept. 29, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Negotiable Instruments Act, 1881 (NI) - Section 138, 142

**Citation:** (2010) 1 LW(Cri) 1467**Hon'ble Judges:** T. Sudanthiram, J**Bench:** Single Bench**Advocate:** M. Arumugan, for the Appellant; C. Gurulingam, for the Respondent**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

T. Sudanthiram, J.

The revision Petitioner herein is the accused in C.C. No. 199/2003 on the file of the Additional District Munsif, Tindivanam and the Respondent herein filed a private complaint against the revision Petitioner for an offence u/s 138 of Negotiable Instruments Act. The Trial Court convicted the Petitioner u/s 138 of Negotiable Instruments Act and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs. 1 lakh and also directed the said amount to be paid as compensation to the complainant/P.W. 1. The conviction and sentence were confirmed by the learned Additional District and Sessions Judge, FTC II, at Tindivanam in C.A. No. 7/2007. Challenging the said conviction and sentence, the Petitioner has preferred this revision.

2. The case of the complainant is that the accused issued for a sum of Rs. 1 lakh to the complainant/P.W.1 a cheque/Ex.P.1 on 25.3.2003 towards the loan obtained by

him. On 27.3.2003, P.W.1 deposited the cheque in Primary Agricultural Co-operative Bank. But the cheque was dishonoured and returned for the reason that there was no sufficient funds in the account. As per the requisition of the accused, P.W.1 again deposited the said cheque for collection on 25.5.2003 and again it was returned on 27.5.2003 for the reason that there was no sufficient fund. P.W.3 issued a notice/Ex.P.4 through his counsel to the accused and the accused gave a reply Ex.P.5. The accused had not paid the cheque amount. Therefore, private complaint was filed by P.W.1 against the accused.

3. On the side of the complainant, P.W.1 and 2 were marked and Exs.P1 to P.5 were marked. The accused was questioned u/s 313 Code of Criminal Procedure with regard to the incriminating circumstances and he denied his complicity.

4. On the side of the accused, the Branch Manager of Lakshmivilas Bank was examined as D.W.1. Ex.D.1 to D3 were marked. As far as Ex.D1 is concerned, it was marked during the cross examination of P.W. 1.

5. Both the Trial Court and Appellate Court after analysing the the oral and documentary evidence, convicted the accused as stated above.

6. Learned Counsel for the revision Petitioner submitted that the complaint filed by P.W.1 was barred by limitation. P.W.1 had sent a registered letter dated 28.5.2003 and it was also received by the accused on 30.5.2003. Ex.D.1 was also accepted by P.W.1. In the said Ex.D.1, P.W.1 demanded for the return of cheque amount for a sum of Rs. 1 lakh. As Ex.D1, demand letter being received by the accused on 30.5.2003, the complaint ought to have been filed within 45 days. But the complaint was filed only on 18.7.2003. Learned Counsel also relied on the decision of the Hon"ble Supreme Court in Krishna Exports and Ors. v. Raju Das reported in (2004) 13 SCC 498.

7. Learned Counsel for the Respondent submitted that Ex.D.1 is only a letter sent by P.W.1. But it is not a legal notice and the legal notice was sent by P.W.1 through his lawyer which is marked as Ex.P.4/ notice dated 17.6.2003 and it was received by the accused on 18.6.2003 and the complaint was filed on 18.7.2003 and it was well within the time. Learned Counsel also submitted that both the Trial Court and the Appellate Court relied on the decisions Mayfair Knitting Industries Ltd v. Mr. G.P. Vijayakumar reported in 2002 (2) L.W. (Crl.) 918 and Padmini Polymers Ltd. v. Unit Trust of India reported in 2003 (1) MWN (Crl) DCC Del 38 which were also followed by this Hon"ble High Court in Dr. P. Vijayakumar v. Tata Finance Ltd reported in 2005(1) MWN (Cr.) DCC 23 (Mad).

8. This Court considered the submissions and perused the records.

9. Ex.D1 is the letter sent by P.W.1 to the accused demanding the cheque amount of Rs. 1 lakh dated 28.5.2003 and it was received by the accused on 30.5.2003. Ex.D.1 was admitted by P.W.1. After receiving the letter Ex.D.1, the accused has not paid

the amount within 15 days. Thereafter, within 30 days, the complaint ought to have been filed. But the complaint was filed on 18.7.2003. According to the complainant, the complaint is within the time as per the notice- Ex.P.4 sent through lawyer. Now the question that arises for consideration is whether Ex.P.4 amounts to second notice or it is to be taken as first notice. If Ex.D.1 is accepted as a notice, demanding the cheque amount, then the complaint filed by P.W.1 is barred by limitation.

10. It is observed by the Hon"ble Supreme Court in paragraph 3 of the judgment reported in (2004) 13 Supreme Court Cases 498(cited supra) as follows:

According to the learned Counsel for the Respondent, the earlier notice was only in the nature of a communication which does not spell out in clear terms a demand to make the payment. We find it difficult to accept the contention. On a reading of the letter dated 15.2.1995, it is painly clear that the Respondent required immediate payment of the amount of cheque to be arranged failing which he threatened to take legal action in the matter. The said letter certainly qualifies itself as a notice within the contemplation of Clause (c) of the proviso to Section 138. We are, therefore, of the view that the learned Magistrate should not have taken cognizance of the complaint after the expiry of the time-limit prescribed by Clause (b) of Section 142 of the Act. The proceedings taking cognizance and issuance of the process are, therefore, liable to be quashed.

11. In view of the ratio laid down by the Hon"ble Supreme Court, Ex.D1 in which P.W. 1 had demanded payment of the amount of cheque by the accused and also had stated that legal action would be taken against the accused, Ex.D.1 letter sent by P.W.1 should be treated as notice within the contemplation of Clause (c) of the proviso to Section 138 of the Negotiable Instruments Act. If Ex.D1 is treated as a notice, the complaint filed by the complainant is only after the expiry of the time limit of 30 days prescribed by Clause (b) of Section 142 of the Negotiable Instruments Act.

12. In view of the decision of the Hon"ble Supreme Court (cited supra) the decision reported in 2005(1) MWN (Cr.) DCC 23 (Mad) is not a good law since while rendering the judgment the decision of the Hon"ble Supreme was not considered.

13. In the result, the conviction and sentence imposed on the Petitioner are set aside and the criminal revision petition is allowed.