

(2009) 08 MAD CK 0370

Madras High Court

Case No: Criminal O.P. No. 17617 of 2007 and M.P. 1 of 2007

M. Ramachandran

APPELLANT

Vs

Arun Agencies

RESPONDENT

Date of Decision: Aug. 28, 2009

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138, 141, 142
- Penal Code, 1860 (IPC) - Section 415, 420

Hon'ble Judges: C.S. Karnan, J

Bench: Single Bench

Advocate: R. Balasubramanian, for the Appellant; P.T. Perumal, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

C.S. Karnan, J.

The above Criminal Original Petition has been filed by the petitioner to call for the Records in STC No. 636 of 2007 pending on the file of the Judicial Magistrate I, Coimbatore and quash the same.

2. The short ingredients of the complaint is stated as follows:

The complainant, namely, M/s. Arun Agencies, represented by its proprietor filed STC. No. 636 of 2007 an alleged offence under Sections 138, 141 and 142 of the Negotiable Instruments Act.

The accused has borrowed a sum of Rupees fifteen lakhs ie., a cheque bearing No. 343069 dated 01.07.2002 for a sum of Rs. 10 lakhs in favour of accused drawn on Indian Bank, Trichy road branch, Coimbatore and a sum of Rs. 5 lakhs by way of cash dated 02.07.2002. For the said amount, the accused executed an on demand promissory note in favour of the complainant.

3. The said amount along with interest was not repaid by the accused. So, the accused issued a post dated cheque bearing No. 791109 dated 08.04.2005 for Rs. 16,82,000 drawn in favour of the complainant on the Indian Overseas Bank, R.S.Puram Branch, Coimbatore. The complainant presented the cheque for collection on 05.06.2005 through his banker, Indian Bank, Trichy Road Branch, Coimbatore. The said cheque was dishonoured with an endorsement, "Funds insufficient". The same was informed to the accused person by way of Legal notice. The same was received by the accused and he sent a reply to the complainant also. Therefore, the complainant filed the complaint against the accused person for an alleged offence u/s 138 of Negotiable Instruments Act and u/s 415 and Section 420 of I.P.C. Along with the said complaint, the complainant has mentioned 3 witnesses, including complainant and listed 6 documents as exhibits.

4. The Learned Magistrate has taken the case on his file and issued summons to the petitioner/accused herein.

5. Now, the accused/petitioner herein has filed the above Criminal Original Petition to quash the complaint on the following points.

The petitioner has alleged that the Respondent is known to him for the past several years and he was looking after the entire affairs of the petitioner's business at Coimbatore. So, the petitioner relied on him and even went to the extent of entrusting the cheques. Further, the petitioner has alleged that due to some civil dispute regarding compensation to tenants, the petitioner gave 2 cheques dated 28.06.2002, one for Rs. 15 lakhs and another for Rs. 5 lakhs. From out of the said amount, the respondent gave a cheque for Rs. 10 lakhs which was encashed by the petitioner. But the petitioner was shocked to receive a legal notice from the Respondent dated 15.06.2005 as if the petitioner had borrowed a sum of Rs. 15 lakhs from the respondent on 01.07.2002 for urgent business purpose by way of cheque and later Rs. 5 lakhs by cash on 02.07.2002 on promissory note with interest at the rate of 12% per annum. It has been alleged by the respondent that the petitioner had issued a post dated cheque bearing No. 791109 dated 08.04.2005 for Rs. 16,82,000/= drawn on Indian Overseas Bank, R.S.Puram branch, Coimbatore-641002. The petitioner contends that before January 2005, the petitioner had entrusted some blank signed cheques with the respondent and the respondent had misused the said cheques.

6. Then the petitioner had sent a reply notice and the respondent came for a compromise and returned the original cheque to the petitioner in the second week of July 2005 and made an endorsement as cancelled in the cheque and settled the matter in amicable manner. Subsequently, the petitioner got a summons from the Judicial Magistrate I, Coimbatore dated 26.04.2007 to appear in person on 26.06.2007 in STC No. 636/2007 for an alleged offence u/s 138 of Negotiable Instruments Act. When the petitioner filed for a copy application, to get certified copy of complaint, cheque, Bank Return Memo vide C.A No. 7520 dated 11.06.2007,

the said application was returned by the Honourable Court with an endorsement, "Returned, since the original cheque not yet produced in this case. Hence Returned" dated 11.06.2007.

7. The petitioner submits that the above complaint had been filed on 01.08.2005 with delay of 10 days, even without filing the original cheque. The petitioner is at a loss to understand how the complaint was taken on file even without the original cheque, which the petitioner alleges is with him. It has been further alleged that the said complaint has been returned several times for representation, but the respondent has made an endorsement stating that he was not able to comply with it since he was in judicial custody for several other cases.

8. Hence the petitioner has alleged that the respondent had cheated him by criminal breach of trust and misusing his cheque and that even after compromise, a false complaint has been foisted, that too, after a period of 2 years before the learned Judicial Magistrate I, Coimbatore. Hence the petitioner prays for quashing the complaint in STC No. 636 of 2007.

9. The Learned Counsel for the petitioner argued that as the matter in dispute has been resolved between the parties, the cheque has also been returned to the petitioner/accused. Further, the copy of the said cheque has been filed along with the typed set of papers by the petitioner's counsel. Further, the petitioner's counsel showed the original cheque in the Open Court. The Learned Counsel for the respondent filed typed set of papers and also filed written arguments wherein he had cited a judgement in 2005(1) DCR 540 Kerala High Court, N. Chitaranjan V. v. Jayarajan and Anr.

10. Considering all the facts and circumstances of the case, the STC No. 636 of 2007 has been filed on the basis of the cheque bearing No. 791109 dated 08.04.2005 for a sum of Rs. 16,82,000/=. The xerox copy of the cheque showed that the cheque has been cancelled. Further, the Learned Counsel for the petitioner showed the original cheque in the Open Court. As such, the said cheque issued by the Petitioner is in the possession of the petitioner. This cheque is a vitally important document for filing the case in STC No. 636 of 2005. The whole case has been cancelled on the basis of the said cheque. Now the said cheque has been cancelled and in the possession of the petitioner. As such, the STC No. 636 of 2005 cannot survive on the file of the Learned Judicial Magistrate I, Coimbatore. Hence, the STC No. 636 of 2005 has got to be quashed. Accordingly, it is quashed. The Criminal Original Petition No. 17617 of 2007 is allowed. Consequently, connected Miscellaneous Petition is closed.