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Saravanan Vs S.N. Sundaram

Court: Madras High Court (Madurai Bench)

Date of Decision: Aug. 10, 2010

Acts Referred: Negotiable Instruments Act, 1881 (NI) â€" Section 138, 139

Citation: (2012) 1 RCR(Civil) 784 : (2011) 4 RCR(Criminal) 608

Hon'ble Judges: R. Mala, J

Bench: Single Bench

Advocate: N. Sathish Babu, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. Mala, J.
The petitioner approaches this Court with a prayer to call for the records in connection with the case in C.C. No. 476 of 2009

on the file of the learned Judicial Magistrate No. 1, Dindigul and quash the same.

2. The learned counsel appearing for the petitioner would submit that in the private complaint filed by the respondent, it is alleged that the petitioner

had borrowed a sum of Rs. 1,50,000/-from the respondent on 15.12.2009 for his urgent financial needs and given a cheque for the said amount

bearing No. 868385 drawn on Indian Bank, Dindigul Branch and promised to repay the said amount within a period of 3 months, since he has not

been repaid the amount, the respondent has represented the cheque for collection on 15.05.2009, but the same was returned as ""funds insufficient"

and thereafter, the respondent has issued statutory notice to the petitioner on 11.06.2009 demanding the amount of Rs. 15,00,000/- instead of Rs.

1,50,000/- and subsequently, the respondent issued a rejoinder notice stating that there is typographical mistake in mentioning the amount and the

petitioner has to pay a sum of Rs. 1,50,000/- and then, the petitioner has also sent reply denying his liability and thereafter, the respondent has

preferred the complaint for the offence u/s 138 of Negotiable Instrument Act, for which, the petitioner has come forward With the present petition

to quash the said complaint.

3. Even though, notice has been served to the respondent, he has not appeared before this Court either himself or through counsel.

4. Now, this Court has to decide as to whether the mentioning of Rs. 15,00,000/- in the statutory notice dated 11.06.2009 instead of Rs.

1,50,000/-will vitiate the entire proceedings even though a rejoinder notice has been issued by the respondent stating that the same is a

typographical error.

5. The learned counsel appearing for the petitioner would rely upon the decisions in K.R.Indira v. Dr. G. Adinarayana, reported in 2004 1 L.W.

(Crl.) 438 and Raj v. Rajan reported in 3 (1997) CCR 643 and submit that the notice claiming higher amount or lesser makes it insufficient and

vague, such notice will be illegal. It is appropriate to consider the above said decision wherein, the Kerala High Court has held as follows;

In the case at hand, the amount covered by the cheque is Rs. 40,000/- which was claimed, but that amount together with interest without

specifying the amount of interest or the rate interest, that certainly makes a notice vague and insufficient. It cannot be treated as a notice as

contemplated by proviso (b) to Section 138 of the Act. In the circumstances, for want of the proper and legal notice also, the acquittal is

sustainable.

It is also appropriate to consider the decision in K.R. Indira v. Dr. G. Adinarayana, reported in 2004 1 L.W. (Crl.) 438, wherein, the Aped Court

has held as follows :

7. The only question for consideration by us is whether the notice in question purportedly issued under clause (b) of the proviso to Section 138 of

the Act was valid or not Section 139 of the Act has also relevance and needs reference. We extract below Sections 138 and 139 of the Act:

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 provision of this Act, be punished with imprisonment for a term

which may extend to one year, 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) ***

(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 fifteen 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.

***

139. Presumption in favour of holder -It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the

nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.

8. As was observed by this Court in Central Bank of India v. Saxons Farms 2011 ACD 65 8 the object of the notice is to give a chance to the

drawer of the cheque to rectify his omission. The demand in the notice has to be in relation to ""said amount of money"" as described in the

provision. The expression ""payment of any amount of money"" as appearing in the main portion of Section 138 of the Act goes to show that it needs

to be established that the cheque was drawn for the purpose of discharging in whole or in part of any debt or any liability, even though the notice as

contemplated may involve demands for compensation, costs, interest etc. The drawer of the cheque stands absolved from his liability u/s 138 of

the Act if he makes the payment of the amount covered by the cheque of which he was the drawer within 15 days from the date of receipt of

notice or before the complaint is filed.

9. In Suman Sethi Vs. Ajay K. Churiwal and Another, it was held that the legislative intent as evident from Section 138 of the Act is that if for the

dishonoured cheque the demand is not met within 15 days of the receipt of the notice the drawer is liable for conviction. If the cheque amount is

paid within the above period or before the complaint is filed the legal liability u/s 138 ceases to be operative and for the recovery of other demands

such as compensation, costs, interests etc. separate proceedings would lie. If in a notice any other sum is indicated in addition to the amount

covered by the cheque, that does not invalidate the notice.

10. The offence u/s 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are

components of the said offence :

(1) drawing of the cheque by a person on an account maintained by him with a banker, for payment to another person from out of that account for

discharge in whole/in part of any debt or liability,

(2) presentation of the cheque by the payee or the holder in due course to the bank,

(3) returning the cheque unpaid by the drawee bank for want of sufficient funds to the credit of the drawer or any arrangement with the banker to

pay the sum covered by the cheque,

(4) giving notice in writing to the drawer of the cheque within 15 days of the receipt of information by the payee from the bank regarding the return

of the cheque as unpaid demanding payment of the cheque amount, and

(5) failure of the drawer to make payment to the payee or the holder in due course of the cheque, of the amount covered by the cheque within 15

days of the receipt of the notice.

11. Strong reliance was placed by the learned counsel for the appellants on Suman Sethi case to contend that if the indication in the notice of other

amounts than that covered by the cheque issued, does not as held by this Court invalidate the notice, there is no reason as to why a consolidated

notice for two complainants cannot be issued. The extreme plea as is sought to be raised in this case based upon Suman Sethi case is clearly

untenable. Though no formal notice is prescribed in the provision, the statutory provision indicates in unmistakable terms as to what should be

clearly indicated in the notice and what manner of demand it should make. In Suman Sethi case on considering the contents of the notice, it was

observed that there was specific demand in respect of the amount covered by the cheque and the fact that certain additional demands incidental to

it, in the form of expenses incurred for clearance and notice charges were also made, did not vitiate the notice. In a given case if the consolidated

notice is found to provide sufficient information envisaged by the statutory provision and there was a specific demand for the payment of the sum

covered by the cheque dishonoured, mere fact that it was a consolidated notice, and/or that further demands in addition to the statutorily envisaged

demand were also found to have been made may not invalidate the same. This position could not be disputed by the learned counsel for the

respondent. However, according to the respondent, the notice in question is not separable in that way and that there was no specific demand made

for payment of the amount covered by the cheque. We have perused the contents of the notice. Significantly, not only the cheque amounts were

different from the alleged loan amounts but the demand was made not of the cheque amounts but only the loan amount as though it is a demand for

the loan amount and not the demand for payment of the cheque amount, nor could it be said that it was a demand for payment of the cheque

amount and in addition thereto made further demands as well. What is necessary is making of a demand for the amount covered by the bounced

cheque which is conspicuously absent in the notice issued in this case. The notice in question is imperfect in this case not because it had any further

or additional claims as well but it did not specifically contain any demand for the payment of the cheque amount, the non-compliance with such a

demand only being the incriminating circumstance which exposes the drawer for being proceeded against u/s 138 of the Act.

6. Considering the submissions on either side and the decisions relied upon, it is alleged that the petitioner herein has received a sum of Rs.

1,50,000/- from the respondent and issued a cheque and he had also given undertaking that he will repay the same within three months, since he

has not repaid the amount, the respondent has represented the cheque on 15.05.2009, which was returned as ""insufficient funds"" and thereafter,

the respondent has issued a statutory notice on 11.06.2009, wherein, he has demanded a sum of Rs. 15,00,000A instead of Rs. 1,50,000/- and a

rejoinder notice dated 23,06.2009 has also been issued by the respondent, in which paragraph No. 2, the respondent has stated that the same is

only a typographical error.

7. A perusal of the entire records would reveal that the cheque was returned on 15.05.2009 and the statutory notice has been sent on 11.06.2009

with a demand for a sum of Rs. 15,00,000/- instead of Rs. 1,50,000/- and immediately, he sent the rejoinder notice on 23.06.2009, then only, the

petitioner has sent reply on 27.06.2009. Even though in the statutory notice, the respondent has mentioned wrongly, that has been properly

explained in the rejoinder notice. Admittedly, the complaint has also been preferred before the court within the time stipulated u/s 138 of

Negotiable Instrument Act, hence, the above said decisions are not applicable to be facts of the present case.

8. In such circumstances, the arguments advanced by the learned counsel appearing for the petitioner that since the statutory notice is not contained

the correct amount of cheque is a ground for quashing does not merit acceptance and there is no reason to quash the proceedings against the

petitioner and hence, this Court is of the opinion that the criminal original petition is liable to be dismissed.

9. In fine, this criminal original petition is dismissed.

10. Consequently, connected miscellaneous petitions are closed.