

(2010) 11 MAD CK 0311

Madras High Court

Case No: Criminal O.P. No's. 14168, 14169, 14170, 14171, 14172, 14173, 14174, 14175, 14176, 14177, 14178, 14179, 14180, 14181, 14182, 14183, 14184, 14185, 14186 and 14187 of 2010 and M.P. No's. 1 of 2010

Madras Sea Food Agency

APPELLANT

Vs

RDJ Sea Foods

RESPONDENT

Date of Decision: Nov. 8, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 139, 91
- Negotiable Instruments Act, 1881 (NI) - Section 138

Hon'ble Judges: G.M. Akbar Ali, J

Bench: Single Bench

Advocate: R. Raman Lal, for the Appellant; C.S. Dhanasekaran, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

G.M. Akbar Ali, J.

The petitions are filed against the order passed by the learned 13th Metropolitan Magistrate Court at Egmore, Chennai in CrI.M.P. Nos. 3509, 3515, 3503, 3520, 3768, 3519, 3511, 3506, 3502, 3521, 3517, 3516, 3505, 3508, 3504, 3510, 3512, 3518, 3513 and 3514 of 2009 in CC Nos. 7185, 10982, 11617, 12325, 11929, 12326, 7440, 5721, 11618, 13914, 12077, 12983, 7094, 7269, 7120, 10551, 10552, 11930, 10780, 10781 of 2008 dated 6.1.2010

2. The Petitioner is the complainant in a private complaint filed u/s 138 of Negotiable Instruments Act. The private complaint was taken on file and the complainant was examined as P.W.1. On cross examination of the complainant, the accused/Respondent could elicit that he is ready to submit Income tax returns and passbook before the Court in order to show the accounts.

3. The Respondent accused had immediately filed a petition u/s 91 of Cr.P.C (hereinafter referred as "Code) for the production of

i. Bank statements/bank pass books pertaining to the Respondents various bank accounts account relating to the months of December 2005, January to December 2006, January to December 2007, January to December 2008

ii. Account books cash book and ledger pertaining to year ending 1.4.2005 to 31.3.2006, 1.4.2006 to 31.3.2007, 1.4.2007 to 31.3.2008, 1.4.2008 to 31.3.2009.

iii. Income tax returns acknowledged with details of balance sheets and profit and loss accounts with complete schedules eptaining to the periods 1.4.2005 to 31.3.2006, 1.4.2006 to 31.3.2007, 1.4.2007 to 31.3.2008, 1.4.2008 to 31.3.2009.

4. The Petitioner resisted the application stating that those documents are not necessary to discharge the burden of the accused. However, the learned Magistrate found that the Petitioner has disclosed that he was willing to produce the income tax returns and passbook and therefore allowed the petition and directed the Petitioner to produce the income tax returns and other documents as desired by the Respondents. Aggrieved by the order, the complainant is before this Court.

5. Mr.R. Raman Lal, the learned Counsel for the Petitioner submitted that the Respondent had dues payable by him during the business transactions and after admitting the liability, he has issued cheques. The learned Counsel pointed out that the Petitioner/complainant has proved the legally enforceable debt for which cheques have been drawn and the presumption is in favour of the Petitioner for such liability and only to drag on the proceedings, the Petitioner has come forward with an application u/s 91 Code of Criminal Procedure The learned Counsel further pointed out that the Respondent has sought production of bank accounts relating to December 2005 to December 2008 and accounts book, cash book and ledger pertaining to the financial years 2005 to 2009 and similarly the income tax returns for the same year. The learned Counsel pointed out that the volumes of the books cannot be produced before the trial court and it is evident that the Respondent is trying to fish out his defence from the accounts of the Petitioner.

6. On the contrary, the Mr. C.S. Dhanasekaran, the learned Counsel for the Respondent submitted that the Petitioner has filed 20 cases on the basis of various cheques pertaining to various accounting years and therefore, the accounts are necessary documents to verify the amounts due and payable by the Respondent. The learned Counsel pointed out that the cheques were alleged to have been issued for the business transactions and the Petitioner had admitted that there were payments by the Respondents by way of cheque, cash and on account transfer. The learned Counsel pointed out unless the accounts book and the bank statements are perused, the Respondent will not be in a position to rebut the presumption.

7. Heard and perused the materials available on record.

8. Admittedly, there was a business transaction between the parties. According to the Petitioner, a sum of Rs. 18,00,000/- was due and the Respondent had issued 18 cheques, out of which, 2 cheques alone were cleared. The Petitioner has filed private complaints pertaining to return of various cheques. Admittedly, the amount due is only on the business transactions. The Respondent had taken a plea that he had paid various amounts and the Petitioner had also admitted that account books will reflect the amounts paid and the amounts due.

9. Section 139 reads as follows:

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

10. There is a presumption in favour of the Petitioner, but at the same time, it is a rebuttable presumption. If the Respondent had taken a stand that he has already repaid certain amounts which would reflect in the accounts books of the Petitioner, he is entitled to call for the accounts books. However, the Respondent has sought for the production of bank accounts for three years, account book, cash book and ledger for three financial years and also the Income tax returns for the three financial years. In my considered view, the account books viz., debit and credit relating to the Respondent alone will show what is the amount due and what is the amount paid and what is the amount liable to be paid.

11. Therefore, for the purpose of rebutting the presumption the account books viz., the ledgers pertaining to the Respondent alone for the three financial year is sufficient to be produced.

12. It is also to be noted that the Petitioner is not called upon to prove the legally enforceable debt as there is a presumption in his favour. The burden is on the Respondent to rebut such presumption and only to that extent the accounts relating to the Respondent alone are sufficient.

13. In the result, the order of the learned 13th Metropolitan Magistrate Court at Egmore, Chennai in CrI.M.P. Nos. 3509, 3515, 3503, 3520, 3768, 3519, 3511, 3506, 3502, 3521, 3517, 3516, 3505, 3508, 3504, 3510, 3512, 3518, 3513 and 3514 of 2009 in CC Nos. 7185, 10982, 11617, 12325, 11929, 12326, 7440, 5721, 11618, 13914, 12077, 12983, 7094, 7269, 7120, 10551, 10552, 11930, 10780, 10781 of 2008 dated 6.1.2010 is modified and the Petitioner is directed to produce the account books namely the ledgers relating to the Respondent's accounts alone for three financial years starting from 1.4.2005. Consequently, connected Mps are closed. The learned Magistrate is directed to complete the trial as expeditiously as possible.