

(2010) 02 MAD CK 0196

Madras High Court

Case No: Criminal O.P. No. 31150 of 2006 and M.P. No. of 2006

T. Vinay Kumar

APPELLANT

Vs

M. Adithya Ram

RESPONDENT

Date of Decision: Feb. 1, 2010

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138, 142

Citation: (2011) 3 RCR(Criminal) 226

Hon'ble Judges: C.T. Selvem, J

Bench: Single Bench

Advocate: K.V. Ramesh, for the Appellant; T.M. Pappiah, for the Respondent

Final Decision: Allowed

Judgement

C.T. Selvem, J.

This petition seeks to quash the proceedings pending in C.C. No. 210 of 2005 on the file of the XVI Metropolitan Magistrate, George Town, Chennai. The petitioner herein is the accused in the said case and faces trial for offence punishable u/s 138 of Negotiable Instruments Act. In support of the petition to quash the proceedings, the point urged by the learned counsel for the petitioner is that the entire transactions between the parties took place at Hyderabad and the complainant, who is having an office at Chennai has issued a statutory notice u/s 138 of Negotiable Instruments Act therefrom and initiated the complainant case before the lower court. This, it is submitted, is wrongful, since the Hon'ble Supreme Court, in a decision reported in Harman Electronics (P) Ltd v. National Panasonic India Ltd. 2009 (1) NIJ 107 (SC) : 156 (2009) DLT 160 SC has held as follows :

14. It is one thing to say that sending of a notice is one of the ingredients for maintaining the complaint but it is another thing to say that dishonour of a cheque by itself constitutes an offence. For the purpose of proving its case that the accused had committed an offence u/s 138 of the Negotiable Instruments Act, the

ingredients thereof are required to be proved. What would constitute an offence is stated in the main provision. The proviso appended thereto, however, imposes certain further conditions which are required to be fulfilled before cognizance of the offence can be taken. If the ingredients for constitution of the offence laid down in the Provisos (a), (b) and (c) appended to Section 138 of the Negotiable Instruments Act intended to be applied in favour of the accused, there cannot be any doubt that receipt of a notice would ultimately give rise to the cause of action for filing a complaint. As it is only on receipt of the notice, the accused at his own peril may refuse to pay the amount. Clauses (b) and (c) of the proviso to Section 138 therefore must be read together. Issuance of notice would not by itself give rise to a cause of action but communication of the notice would.

2. The learned counsel for the respondent, on the other hand, placed reliance on a decision of the Hon''ble Supreme Court reported in [Smt. Shamshad Begum Vs. B. Mohammed](#), wherein the Hon''ble Supreme Court has observed as follows :

7. As was noted in K. Bhaskar''s case (supra) the offence u/s 138 of the Act can be completed only with the concatenation of a number of acts. The acts which are components are as follows:

(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 to the drawer of the cheque demanding payment of the cheque amount;

(5) failure of the drawer to make payment within 15 days of the receipt of the notice.

8. it is not necessary that the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at five different localities. But concatenation of all the above five acts is sine qua non for the completion of the offence u/s 138 of the Act.

3. I have considered the rival submissions.

4. On a perusal of the complaint, it does not disclose or reveal any cause of action at Chennai except for the fact that the complainant''s office is at Chennai and that the statutory notice was issued from there. Further, the complaint itself reveals that the cheques giving rise thereto were drawn on a bank at Secunderabad and that the same were presented for payment through a Bank at Hyderabad. Both are twin cities. With regard to the rulings of Apex Court relied on by either counsel, it is seen that both the judgments, flow from benches of equal strength. The decision relied upon by the counsel for the petitioner, wherein it has been held that issuance of notice would not, in itself, make out a cause of action is the latter one. Under such circumstances, this Court would follow the latter decision of the Apex Court and

accordingly, holding that no cause of action, has arisen in Chennai, the proceedings in C.C. No. 210 of 2005 on the file of the XVI Metropolitan Magistrate, George Town, Chennai stand quashed.

5. It is made clear that the present order is passed without prejudice to the right of the respondent/complainant to prefer a fresh complaint on the same cause of action before the appropriate Court and his seeking condonation of delay taking recourse to the proviso to Section 142(b) of the Negotiable Instruments Act.

6. The Criminal Original Petition is ordered accordingly and the connected miscellaneous petition is closed.