

K. Kumar Vs. Bapsons Foot Wear

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Court : Chennai

Decided On : Oct-11-1993

Reported in : [1995]83CompCas172(Mad)

Judge : Pratap Singh, Adv.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138

Appeal No. : Criminal Miscellaneous Petition No. 4801 of 1990

Appellant : K. Kumar

Respondent : Bapsons Foot Wear

Advocate for Pet/Ap. : K. Selvarangan, Adv.

Judgement :

Pratap Singh, J.

1. The accused in C.C. No. 1550 of 1990, on the file of the Seventh Metropolitan Magistrate, George Town, Madras, has filed this petition under section 482 of the Criminal Procedure Code, for quashing the proceedings in the said C.C. No. 1550 of 1990.

2. The respondent has filed the complaint against the petitioner under section 138, read with section 142 of the Negotiable Instruments Act (which I shall hereafter

refer to as 'the Act'). The allegation in it are briefly as follows :

In the course of their business, the accused/petitioner herein had issued a cheque dated December 20, 1989, for Rs. 2,000 drawn on Karur Vysya Bank Ltd., Polur. When the cheque was presented for collection through their bankers State Bank of Bikaner and Jaipur, Broadway Branch, Madras, the same was returned dishonoured on December 23, 1989, with an endorsement 'please refer to drawer'. Thereupon, the complainant sent notice through lawyer dated January 3, 1990. It was returned by the accused on January 6, 1990. He did not pay the amount within fifteen days of the receipt of notice. Thus, he has committed an offence under section 138 of the Act. Hence, the complaint.

3. Mr. K. Selvarangan, learned counsel for Mr. V. Gopinathan, would submit that one of the essential ingredients of the offence under section 138 of the Act is that the cheque must have been drawn 'for the discharge, in whole or in part of any debt or other liability' and in the instant case, A there is no such allegation in the complaint and so the complaint is liable to be quashed.

4. I have carefully considered the submission made by Mr. K. Selvarangan. The relevant portion of the complaint reads as follows :

'The complainant states that in the course of their business, the accused had issued a cheque S.B. No. 795044, dated December 20, 1989, for Rs. 2,000 drawn on Karur Vysya Bank Limited, Polur, North Arcot District.'

5. The relevant clause is 'in the course of their business, the accused had issued a cheque'. The requirement for an offence under section 138 of the Act is that the cheque must be drawn 'for the discharge in whole or in part of any debt or other liability.' The allegation in the complaint, which I have extracted above, does not satisfy the requirements, needed for making out an offence under section 138 of the Act. On this ground, the complaint is liable to be quashed.

6. In view of the above, Criminal Miscellaneous Petition No. 4801 of 1990, is allowed and all further proceedings in C.C. No. 1550 of 1990 on the file of the Seventh Metropolitan Magistrate, George Town, Madras, shall stand quashed.

