Hansa Vs. B. Muralidharan

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Court : Chennai

Decided On : Jan-10-1994

Reported in : [1994]81CompCas315(Mad)

Judge : Pratap Singh, J.

Acts : Negotiable Instruments Act, 1881 - Sections 138

Appeal No. : Criminal Original Petition No. 211 of 1994

Appellant : Hansa

Respondent : B. Muralidharan

Advocate for Pet/Ap. : B.S. Gnanadesikan, Adv.

Judgement :

Pratap Singh, J.

1. The accused in C.C. No. 138 of 1993 on the file of the Judicial Magistrate, Mettupalayam, has filed this petition under section 482, Criminal Procedure Code, praying to call for the records in the above case and quash the same.

2. The short facts are : The respondent has filed a private complaint against the petitioner for an offence under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act'). The allegations in it are briefly as follows : The

accused has issued a cheque on May 15, 1993, in his capacity as proprietor of Zareena Traders to the complainant, for Rs. 1,00,000. The said sum is due to the complainant by the said Zareena Traders in which the accused is the proprietor. The complainant presented the cheque for encashment through his bankers. It was dishonoured with the endorsement 'funds insufficient'. A memo to that effect was issued by the Canara Bank dated May 17, 1993. The complainant issued a legal notice dated May 31, 1993, to the accused calling upon him to pay the cheque amount within 15 days of the receipt of the said notice. The accused received the said notice on June 6, 1993. He did not pay the cheque amount. Hence, the complaint.

3. Mr. B. S. Gnanadesikan, learned counsel appearing for the petitioner, would submit that only in a case where a cheque was issued for discharge of a legally enforceable liability and it was returned dishonoured for insufficiency of funds, is the offence under section 138 of the Act made out and the allegations made in the complaint do not set out a case that the cheque was issued for discharge of a legally enforceable liability and, hence, it is liable to be quashed.

4. I have carefully considered the submissions made by Mr. B. S. Gnanadesikan, learned counsel for the petitioner. To consider the said submission, the relevant portions in the complaint needs extraction. It reads as follows :

'The complainant submits that the accused issued a cheque on May 15, 1993, in his capacity as proprietor of Zareena Traders to the complainant. The said cheque was drawn on Canara Bank, Mettupalayam, dated May 15, 1993, for Rs. 1,00,000 (rupees one lakh only) bearing No. 8422327. The said sum is due to the complainant by the said Zareena Traders in which the accused is the proprietor and it was represented by the accused at the time of issue of cheque that the concern had enough funds in the bank to cover the cheque amount.'

5. I shall also extract the relevant portions in section 138 of the Act, viz., the primary portion and the Explanation, which read as follows :

'Dishonour of cheques 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 : ....

Explanation. - For the purposes of this section, 'debt or other liability' means a legally enforceable debt or other liability.'

6. The question that falls for consideration is whether the above allegations would satisfy the clause 'wherein a 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'. In the Explanation, it is stated that 'debt or other liability', means a legally enforceable debt or other liability. In the instant case, the allegation in paragraph 3 of the complaint is that the said sum is due to the complainant, Zareena Traders. While so, I am clear that this 'clause for the discharge in whole or in part of any debt or other liability', will apply. So, I am unable to accept the submission made by learned counsel. I would like to add that one need not repeat the very words found in section 138 of the Act. That is not the object of the Act. If the allegations in the complaint make out such a meaning that would be sufficient. One need not necessarily extract and put the very words in the section to comply with the requirement of the section. There need not be any such ritualistic repetition in the complaint. Again, I would like to say that the allegations in the complaint do satisfy the requirements of section 138 of the Act.

7. In the result, the petition fails and shall stand dismissed.