

K. Devaraj Vs. T.K. Koya

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Court : Chennai

Decided On : Jul-30-2002

Reported in : 2003CriLJ520

Judge : A. Packiaraj, J.

Acts : Negotiable Instruments Act - Sections 138

Appeal No. : Crl.Op. No. 20998 of 2001 and Crl.M.P. No. 7217 of 2001

Appellant : K. Devaraj

Respondent : T.K. Koya

Advocate for Def. : S. Shanmugavelayutham, Adv.

Advocate for Pet/Ap. : K. Veera Raghavan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

A. Packiaraj, J.

1. This is a petition to quash the proceedings in C.C.No.220 of 2001 on the file of the Judicial Magistrate No. I, Chengalpattu against the petitioner for an offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the

Act).

2. This court, normally would not be inclined to quash the proceedings of an offence under Section 138 of the Act, unless the mandate of Sections 138 and 142 of the Act has not been strictly followed. However, this is one of those cases, where there appears to be a lacuna on the part of the complainant, of having not spoken anything about the cause of action that arose for consideration.

3. The short facts as disclosed in the complaint is that the petitioner had given two cheques bearing Nos.344543 and 344544 dated 20.03.2001 and 29.03.2001 (the details of which need not be gone into for the purpose of this petition) in favour of the complainant, of which, one cheque, on presentation got dishonoured on the ground of Stop Payment. The fact of dishonour was intimated to the complainant on 24.4.2001 by his banker. Accordingly, the complainant issued a notice to the petitioner dated 2.5.2001 mentioning about the dishonour of the cheque and called upon him to pay the amount within 15 days and thereafter he has filed the present complaint.

4. The learned counsel for the petitioner would argue that though notice had been issued to the petitioner, it has not been averred in the complaint about the fact of non-payment of the amount within 15 days, as contemplated under the Act to the complainant.

5. In other words, according to the counsel, one of the ingredients of 138 of the Act is to the effect that after the notice had been issued to the accused within 15 days from the intimation received by the banker about the dishonour, the complainant should ask the accused to call upon him and pay the amount within 15 days, enabling the accused to pay the amount. If the same has not been complied with, then he has to file the complaint within one month from thereon. Therefore, it is mandatory on the part of the complainant to say in clear terms whether the accused had paid the amount, or gave any other explanation withholding the payment or any other excuses. But in the present complaint there is absolutely no whisper at all in relation to that effect.

6. On going through the sworn statement also, I see that though the complainant has stated that he had issued notice to the accused, has not whispered anything about the non-payment of the amount by the petitioner(accused). Consequently, I see that one of the essential ingredients contemplated under Section 138 of the Act is missing.

7. With regard to the above submission, the learned counsel for the petitioner also drew my attention by placing reliance on the decision reported in M/s. Kody Elcot Ltd. Madras, by its Director v. Down Town Hospital Guwahati 1990 MLJ 178, wherein it has been held that the cause of action arises only when the drawer of the cheque fails to make the payment within 15 days from the receipt of the notice. I am fortified with this decision and hold that the essential ingredients namely the absence of the mentioning of non-payment of the amount within 15 days from the receipt of the said notice, which is one of the contingencies required under 138 is missing and hence I have no hesitation to quash the proceedings and the proceedings are accordingly quashed.

8. In the result, the petition is allowed. Consequently, connected Crl.M.P is closed.

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