

Subburam Vs. Rajendran

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Court : Chennai

Decided On : Jul-06-2007

Reported in : I(2008)BC666; 2008CriLJ760

Judge : T. Sudanthiram, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138 and 139

Appeal No. : Cri. O.P. (MD) No. 14832 of 2004 and Cri. M.P. Nos. 5178 and 5179 of 2004

Appellant : Subburam

Respondent : Rajendran

Advocate for Def. : V. Sri Balaji, Adv.

Advocate for Pet/Ap. : S. Ramasamy, Adv.

Disposition : Petition allowed

Judgement :

ORDER

T. Sudanthiram, J.

1. Petitioner seeks to quash the proceedings pending against him in C.C. No. 253 of 2004 on the file of the learned Judicial Magistrate No. II, Virudhunagar.

2. The respondent herein has filed a private complaint against the petitioner for an alleged offence under Section 138 of the Negotiable Instruments Act.

3. The learned Counsel for the petitioner submits that the petitioner was taken to police station and by way of threat, coercion and intimidation by police, the petitioner issued post dated cheques in favour of the respondent herein and other six persons. The petitioner was forced to issue the cheque not for his liability towards the respondent, but to satisfy the respondent who had given complaint against the brother of the petitioner for cheating. As the cheque was not issued to discharge any legally enforceable debt or liability, the complaint is not maintainable.

4. The learned Counsel for the respondent was heard. It was submitted that as the petitioner stepped into the shoes of his brother undertaking to discharge the liability and as such, he is liable for the dishonour of cheques issued by him.

This Court has perused the complaint and considered the rival contentions of both parties.

5. The averments made in the complaint are very much necessary to decide the issue. It is stated in the complaint that the accused's brother by name Vijayakumar received a sum of Rs. 75,000/- on 7-1-2002 from the respondent herein to get a job in Malaysia and sent him to Malaysia. He returned to motherland since the Malaysian firm did not provide proper food shelter and salary and did not act according to the agreement. As one Rajkumar preferred a complaint in the Aruppukkottai Town Police Station against the said Vijaykumar, the brother of the accused, the respondent and the accused (petitioner herein) were summoned and enquired. The accused admitted that his brother had deceitfully received the money and for the amount agreed in the Police Station, he issued number of cheques with different dates to a total sum of Rs. 3,00,000/-- to six persons including the respondent herein. Out of Rs. 75,000/-, after deducting Rs. 25,000/- as expense for to and fro for Malaysia, Rs. 50,000/- was fixed for each one. Two cheques for Rs. 15,000/- and Rs. 20,000/- were given to the respondent herein and for the remaining amount of Rs. 15,000/-, a cheque for Rs. 45,000/- was issued in favour of the respondent, one Rajaram and one Sundarrajan. On

depositing the said cheques in Bank, the cheque for Rs. 15,000/- issued on 6-7-2003 was returned for the reason 'payment stopped by drawer.'

6. From the above said facts narrated in the complaint, it is an admitted fact by the complainant himself that the petitioner herein had no direct liability towards the respondent herein. The cheque was issued only after the complaint was given against the brother of the petitioner herein and the petitioner was enquired in the Police Station and only thereafter, the cheque was given by the petitioner. Though this Court does not go into the question whether the cheque was given by the petitioner in the Police Station due to coercion and threat, the fact remains, the cheque was issued only after the complaint being given in the Police Station against the brother of the petitioner herein for cheating.

7. The only question now to be considered is whether the cheque issued by the petitioner is towards the discharge in whole or in part, of any debt or other liability. The explanation provided under Section 138 of the Negotiable Instruments Act.

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

8. It is from the admitted facts of the complainant/respondent herein, that there was no liability on the part of the petitioner herein, but the question is whether he can be made liable for the amount cheated by his brother. Even if the petitioner herein admitted the criminal liability of his brother and undertakes to pay the amount, legally the petitioner cannot be compelled to pay the amount and there is no legally enforceable debt or other liability.

9. Of course, there is a presumption in favour of the holder under Section 139 of the Negotiable Instruments Act:

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, or any debt or other liability.

10. Still, when there is material in the complaint itself rebutting the presumption and on the admitted facts the liability seems to be legally not enforceable debt or

other liability, the petitioner need not undergo the ordeal of trial.

11. For the above said reasons, the petitioner is held that he is not liable under Section 138 of the Negotiable Instruments Act and the proceedings in C.C. No. 253 of 2004 are quashed and the criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

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