

**S.C. Mathavan Vs. V. Ramathilagam**

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**Court :** Chennai

**Decided On :** Aug-17-2012

**Judge :** A. Arumughaswamy

**Appeal No. :** Criminal Original Petition No.1853 of 2011 & M.P.No.1 of 2011 & M.P.No.1 of 2012

**Appellant :** S.C. Mathavan

**Respondent :** V. Ramathilagam

**Advocate for Pet/Ap. :** For the Petitioner: R.C. Paul Kanagaraj, Advocate. For the Respondent: K. Kalyanasundaram, Advocate.

**Judgement :**

(**Prayer:** Petition filed under Section 482 of Cr.P.C., praying to call for the records and quash the C.C.No.475 of 2010 pending on the file of the Judicial Magistrate, Mettupalayam.)

1. The petitioner is the Accused in C.C.No.475 of 2010 on the file of the Judicial Magistrate, Mettupalayam. The Respondent is the defacto complainant and he has filed the complaint under Sections 138 and 142 of the Negotiable Instruments Act.

2. The allegations in the complaint are:- On 05.01.2008, the petitioner/accused borrowed a loan of Rs.2,00,000/- from the Respondent/Complainant and in consideration of the same, on the same day, the petitioner executed a promissory

note in favour of the Respondent/Complainant agreeing to repay the same with interest at the rate of 24% per annum. Thereafter, the petitioner/accused did not make any payment towards the above loan either towards the principal or interest.

3. Subsequently, on 02.07.2010, the petitioner/accused issued an anti-dated cheque dating as 17.07.2010 for a sum of Rs.3,20,000/- drawn on ICICI Bank, Tirupur Branch in favour of the Respondent/Complainant towards the principal and accrued interest upto 05.07.2010 of the above loan. Thereafter, the petitioner/accused issued a legal notice dated 07.07.2010 to the Respondent/Complainant and her husband. In the mean while, the complainant presented the cheque on 17.07.2010 for collection through her account at Corporation Bank, Mettupalayam Branch and it was returned on 23.07.2010 with an endorsement as "Account Closed". The Respondent and her husband sent a suitable reply dated 28.07.2010 through her counsel under copy to the accused calling upon him to treat the said reply as statutory notice under Section 138 of the Negotiable Instruments Act. It was acknowledged by the accused on 30.07.2010 and his counsel on 29.07.2010. Subsequently, the petitioner sent a rejoinder dated 06.08.2010 through his counsel and he has not come forward to pay and settle the value of the cheque. Again the complainant sent a another reply dated 07.09.2010 through her counsel for the said rejoinder. But the demanded amount was not paid. So the Respondent filed the complaint on which the learned Magistrate has taken cognizance in C.C.No.475 of 2010. Now, the petitioner/accused has filed this petition to quash the said proceedings.

4. The case of the petitioner is that he stood as Guarantor for the loan advanced by the respondent/complainant and her husband for the higher education of their son and while availing the loan amount, the respondent/complainant and her husband paid a sum of Rs.50,000/- to the petitioner/accused as loan amount and the petitioner has repaid Rs.30,000/- on various dates. The balance amount is Rs.20,000/-. The respondent's husband had obtained signatures of the petitioner in blank stamped papers and promissory note, which have been utilized by the respondent by creating documents filed along with the complaint. Since the respondent and her husband sought for exorbitant amount from the petitioner, the petitioner was constrained to issue the Lawyer's Notice as early as on 07.07.2010.

The ingredients under Section 138 of Negotiable Instruments Act have not been fulfilled. Hence, the Complaint under Section 138 is not sustainable in law. The uncontroverted allegations in the complaint do not disclose any offence and make out a case against the petitioner/accused.

5. The vehement contention of the learned counsel for the petitioner is that no statutory notice has been issued by the complainant as per Section 138 of the Negotiable Instruments Act. The petitioner/Accused has sent a notice dated 7.7.2010 to the Respondent and her husband even prior to 17.07.2010. Though the complainant has issued reply on 28.7.2010, it was not in favour of the petitioner/accused and it is only a reply to the notice dated 7.7.2010 in favour of his counsel. Therefore, it is not a statutory notice. The next contention raised by the learned counsel for the petitioner is that if it is taken as if the statutory notice has been taken on 7.9.2010, filing of the complaint on the next day is premature one. Hence, he prayed that the complaint has to be quashed.

6. The learned counsel for the respondent contended that according to the complainant the statutory notice was issued on 27.8.2010 and the complaint was filed on 8.9.2010 i.e. within 15 days from the date of issuance of statutory notice and hence, the complaint is not a premature one and it was filed in time. Hence he prayed that the Criminal Original Petition has to be dismissed.

7. Now, the point for consideration is as to whether the reply notice dated 28.7.2010 issued by the complainant to the advocate for the accused can be termed as statutory notice as contemplated under Section 138 of the Negotiable Instruments Act and it is essential to send a copy of the notice to the accused to comply with the statutory requirements of Section 138?

8. From the perusal of the records it is seen that petitioner/accused has sent a lawyer's notice dated 7.7.2010 to the Respondent and her husband. No doubt the Respondent along with her husband sent a suitable reply dated 28.07.2010 through their counsel disputing the correctness of the notice dated 7.7.2010 and apart from that in the last paragraph of the said reply, it has been specifically mentioned that the petitioner/accused has not honoured the cheque and hence he has been called upon to pay the entire cheque amount within 15 days, otherwise,

the complainant will take appropriate legal steps as per the Negotiable Instruments Act and the petitioner would have to face the consequences thereof as to undergo the punishment as well as to pay the compensation as aforesaid. A copy of the said reply notice was also sent to the Accused and the same was acknowledged by the accused on 30.07.2010. In the complaint at paragraph No.7 it has been specifically mentioned which runs as follows:-

"7. So the said reply dated 28.07.2010 was sent by the Complainant through her counsel under copy to the Accused calling upon him to treat the said reply as statutory notice under Sec. 138 of the Negotiable Instruments Act. It was acknowledged by the Accused on 30.07.2010 and his counsel on 29.07.2010. Subsequently, the petitioner/accused sent a rejoinder dated 06.08.2010 through his counsel. For which the Respondent/Complainant has sent a suitable reply dated 07.09.2010 through her counsel for the said re-joinder."

Under these circumstances, the said reply notice can be treated as statutory notice. Even it is a reply to the earlier notice dated 7.7.2010 issued by the petitioner/accused the ingredients as per Section 138 of the Negotiable Instruments Act has been put forward in that notice. Further, the reply notice dated 28.7.2010, also has been given to the petitioner's counsel as well as to the petitioner/accused. Thereafter, only the complainant has filed the complaint. Therefore, I am of the view the complainant has complied with the statutory requirements required under Section 138 of the Negotiable Instruments Act. Hence, the first contention raised by the learned counsel for the petitioner is rejected.

9. In so far as the next contention raised by the learned counsel for the petitioner is concerned, as already concluded by me in the previous paragraph, statutory notice was given by the complainant only on 28.07.2010 and it was received by the petitioner/accused on 30.07.2010. For which the petitioner through his lawyer has issued a re-joinder on 6.8.2010. Therefore, I am of the view that the second contention raised by the learned counsel for the petitioner is also will not helpful to the case of the petitioner/accused. Hence, it has to be rejected.

10. The reply notice dated 28.7.2010 issued by the complainant to the advocate for the accused can be termed as statutory notice provided it fulfill the statutory obligation provided under Section 138 of the Negotiable Instruments Act and the copy of the notice has to be sent to the accused demanding the cheque amount has to be fulfilled. Since the ingredients of Section 138 of the Negotiable Instruments Act have been satisfied by the complainant in his reply notice dated 28.7.2010, the statutory requirements has been complied with.

11. For the foregoing reasons, there is no reason to quash the proceedings against the petitioner/accused in C.C.No.475 of 2010 pending on the file of the Judicial Magistrate, Mettupalayam. Hence, this Criminal Original Petition is dismissed. Consequently, M.P.No.1/2011 and M.P.No.1/2012 are closed.

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