(1999) 01 MAD CK 0074

In the Madras High Court

Case No : Criminal O.P. No''s. 419, 420 and 603 of 1999

Alsa Constructions and Housing Limited and Another — APPELLANT

Vs

M. Mal Reddy — RESPONDENT

Date of Decision : 25-01-1999

Acts Referred:
Negotiable Instruments Act, 1881 (NI) — Section 138, 139

Citation : (2000) 1 CivCC 568 : (1999) CriLJ 2743 : (1999) 4 RCR(Criminal) 28

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : Zaffarullah Khan, for the Appellant;

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—This is a petition to quash the proceedings against the petitioners initiated by the complainant: the respondent herein through a private complaint filed under Section. 138 of the Negotiable Instruments Act.

2. Mr. Zaffarullah Khan, the learned counsel for the petitioner would stress upon the following points to seek for quashing :-

(1) There was no debt or liability on the date of issue of the cheque, i.e., on 1-1-1997 on which date the memorandum of understanding was entered into between the complainant and the petitioners by which Rs. 30 lakhs loan was obtained and Promissory Note was executed and the immovable property was also given as security. Therefore, S. 138 of the Negotiable Instruments Act cannot be invoked.

(2) Subsequent to the filing of the private complaint dated 19-2-1998 against the petitioners, there was another memorandum of understanding entered into between the parties on 6-11-1998 by which the petitioners agreed to pay the entire amount with interest on or before 30-11 -1998 and the complainant shall withdraw the case filed against the petitioners. Contrary to the revised agreement dated 6-11-1998, now the complaint is actively perused. Therefore,

the proceedings cannot be proceeded with in view of the fresh memorandum of understanding dated 6-11-1998.

3. I have carefully considered the submissions made by the counsel for the petitioners.

4. At the outset, I shall mention that these two points referred to above have been made by the counsel for the petitioners only on the basis of the defence documents. According to the complaint, on 8 1-1997, the accused received Rs. 30 lakhs from the complainant as loan and executed a Promissory Note for a sum of Rs. 30 Lakhs and also entered into a memorandum of understanding. As per the understanding, the accused shall repay the amount within 6 months. In spite of repeated requests and several demands, the amount was not repaid Ultimately, in pursuance of the repeated demands, the accused issued a cheque on 8-1-1998 towards the discharge of the loan amount. However, this was dishonoured on presentation. Therefore, it cannot be said that the cheque was issued by the petitioner in favour of the complainant on 1-1-1997 or at the time of execution of the memorandum of understanding dated 8-1-1997. The case of the defence, as put forward by the petitioner now, has not been referred to either in the complaint or in the memorandum of understanding dated 8-1-1997. Therefore, when the cheque was issued by the petitioner on 8-1-1998, there was an existing liability.

5. The learned counsel for the petitioner has cited the decision in M/s. Balaji Seafoods Exports (India) Ltd. and another Vs. Mac Industries Ltd., wherein it has been held by this Court that as per the agreement between the parties, when a blank cheque was issued on the date of the agreement as a security. Section 138 of the Negotiable Instruments Act cannot be invoked.

6. This decision would not be of any use for the petitioners, since in the said decision, the complainant himself would admit in the agreement and in other documents that it was given only as a security, and that on the date when cheque was issued, there was no liability.

7. In the instant case, according to the complainant, the cheque was issued not on the date of he memorandum of understanding on 8-1 - i 997 as security, but the cheque was issued by the petitioner on 8-1-1998, since repeated demands were made by the complainant to discharge the liability of loan.

8. It is also to be noticed that S. 139 of Negotiable Instruments Act would provide that it shall be presumed, unless the contrary is proved, that the complainant received the cheque from the accused for the discharge of the debt or other liability. Therefore, the accused cannot escape by merely saying that the cheque was given only as a security and that on the date of issuance of the cheque, there was no existing liability. Even assuming that there is no existing liability, it is for the accused to rebut the presumption contained in S. 139 of the Negotiable Instruments Act. This has been dealt with by this Court in K.S. Subbaraman Vs. Iyyammal, .

9. Secondly, it has been argued that the complaint ought to have been withdrawn as per the fresh memorandum of understanding dated 6-7-1998. This is the development which has been taken place subsequent to the cognizance.

10. No doubt, it is true that when there is a fresh understanding between the parties entered into on 6-7-1998, the parties concerned have to comply with those terms. But the fresh memorandum of understanding, a copy of which has been filed along with petition, would show that the complaint would be withdrawn provided the entire principal amount and the interest would be paid by the accused to the complainant on or before 30-11-1998.

11. If those undertaking given by the petitioners have been complied with, then there is no difficulty for the complainant to withdraw the case filed against the petitioner. But, in this petition, it has not been specifically averred that the petitioners have complied with the terms by making the entire payment on or before 30-11-1998.

12. Therefore, I do not find any merit in this petition and accordingly, the petition is dismissed. In view of the order passed in the main petition, the connected Crl. M.Ps. shall stand closed.

