

(2001) 01 MAD CK 0058

In the Madras High Court

Case No : Criminal O.P. No. 24075 of 2000 with Criminal M.P. No"s. 9221 and 9222 of 2000 and 455 of 2001

Angu Parameswari Textiles (P) Ltd. and Others

APPELLANT

Vs

Sri Rajam and Co.
Sri Rajam and Co. Vs Angu
Parameswari Textiles (P) Ltd. and Others

RESPONDENT

Date of Decision : 24-01-2001

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2001) 01 MAD CK 0058

Hon'ble Judges : Malai Subramanian, J

Bench : Single Bench

Advocate : S. Kanniah and M. Kamalanathan, for the Appellant;

Final Decision : Allowed

Judgement

Malai Subramanian, J.—The petitioners were accused in C.C. No. 430 of 2000 on the file of the Judicial Magistrate No. I, Pollachi, who seek to quash the complaint pending against them for an offence u/s 138 of the Negotiable Instruments Act, 1881. The first petitioner is the company represented by the chairman and other petitioners are the directors of the company.

2. According to the facts as averred in the complaint, the complainant-company was dealing in cotton. While so, the complainant supplied cotton to the accused-company and on March 25, 2000, the accused-company issued a cheque for a sum of Rs. 4,68,581 towards the existing liability. Subsequently, on May 2, 2000, the complainant received a demand draft for a sum of Rs. 2,00,000 from the accused and as on May 2, 2000, the amount due to the complainant was only Rs. 2,68,581. Since that amount was not paid, the complainant presented the cheque on August 30, 2000, and the same was returned on August 31, 2000, with an endorsement "garnishee order received". Therefore, the complainant issued a notice on September 13, 2000, demanding the repayment of a sum of Rs. 2,68,581 within 15 days and the notices were received by the directors,

namely, petitioner Nos. 2, 3 and 6 on September 20, 2000, and the notice sent to the first accused was returned as left and so far as the said notices sent to petitioner Nos. 4 and 5 are concerned, they were returned on September 28, 2000. Since the remaining amount was not paid by the accused, the complainant came out with a complaint which is sought to be quashed by the accused.

3. The original cheque amount is for Rs. 4,68,581. Subsequently, the complainant has admitted that he received a demand draft of Rs. 2,00,000 towards part payment of the cheque amount. Therefore, as on May 2, 2000, the amount due to the complainant is only Rs. 2,68,581. Instead of presenting this cheque at a later stage, the complainant ought to have returned the original cheque and subsequently obtained anew cheque for an amount of Rs. 2,68,581. Instead of doing so, the original cheque dated March 25, 2000, for an amount of Rs. 4,68,581 was presented in the Bank which was returned. The contention of learned Counsel appearing for the respondent/complainant is that the said cheque was retained by the complainant only by way of security to the amount of Rs. 2,68,581. If this contention is accepted, the complainant cannot come with a complaint for an offence u/s 138 of the Negotiable Instruments Act because any action taken against the drawer of the cheque which was kept by way of security will not lie.

4. Section 138 of the Negotiable Instruments Act reads that where any cheque was drawn for payment of any amount of money for the discharge in whole or any part of any debt or other liability and the same is dishonoured by the Bank, the person who drew the cheque shall be punishable. Therefore, the cheque drawn should be towards the discharge of either the whole debt or part of the debt. If the cheque is more than the amount of the debt due, I am afraid, Section 138 cannot be attracted. This is a case where the cheque amount was more than the amount due on the date when the cheque was presented. The presentation of the cheque and subsequent dishonour alone raises a cause of action. When the cheque cannot be said to be drawn towards the discharge of either the whole or part of any debt or liability, Section 138 is not attracted. On this sole ground, the complaint is liable to be quashed and is accordingly quashed. The petition is, therefore, allowed, connected Crl.M.P. Nos. 9221 and 9222 of 2000 and Crl.M.P. No. 455 of 2001 are closed.