
(1994) 01 MAD CK 0040
In the Madras High Court
Case No : Criminal O.P.No. 112 of 1994

Balakumaran Textiles

APPELLANT

Vs

Chennammal

RESPONDENT

Date of Decision : 06-01-1994

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 141

Citation : (1994) 81 CompCas 905

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Advocate : K. Kalyanasundaram, for the Appellant;

Judgement

Pratap Singh, J.—The accused in S.T.C. No. 2710 of 1993, on the file of Judicial Magistrate No. I, Kovilpatti, has filed this petition u/s 482

of the Criminal Procedure Code, praying to call for the records in the above case and quash the same.

2. The short facts are : The respondent has filed a complaint for offence u/s 138 of the Negotiable Instruments Act, 1881 (which I shall hereafter

refer as "the Act"). The allegations in it are briefly as follows :

The accused had purchased cotton from the complainant for a sum of Rs. 72,178.16. To discharge the above due, the accused issued a cheque

for Rs. 19,083.35. After deducting the amount, there was a balance of Rs. 53,094.81 from the accused to the complainant. After demand, the

accused issued two cheques dated August 1, 1993, and August 10, 1993, for Rs. 28,094.81 and Rs. 25,000, respectively, towards the said dues.

The complainant presented the above two cheques for collection on August 12, 1993. They were returned dishonoured with an endorsement

insufficient funds"". The complainant received the information on August 16, 1993. The complainant sent a notice to the accused on August 25, 1993, giving 15 days" time for payment. The accused has not chosen to repay the said cheque amount, but sent a reply on September 7, 1993, with false allegations. Hence, the complaint.

3. Mr. K. Kalyanasundaram, learned counsel appearing for the petitioner, would submit that the accused is a partnership firm and none of the partners of the said firm were impleaded as accused and in the absence of their being impleaded as accused, the complaint is not maintainable and is liable to be quashed. He would further submit that only the complainant was examined at the outset and his statement was recorded and no other witness were examined. It is further submitted that the date of service of the statutory notice after dishonour, was not given in the complaint. On that ground also the complaint is liable to be quashed.

4. I have carefully considered the submissions made by learned counsel. To consider the first submission, section 141 of the Act needs extraction.

It reads as follows :

141. (1) If the person committing an offence u/s 138 is a company, every person, who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

5. From the Explanation, it is seen that the company would include the firm and director, in relation to a firm, means a partner in the firm. In view of the above provisions in section 141 of the Act, the partners of the firm, if they are in charge of the business of the company or the firm, as the case may be, at the time of commission of the offence, can be made liable by the deeming provision. Beyond that the section does not say that every person should necessarily be impleaded as an accused. Taking that view of the matter, I am unable to accept the submission made by learned counsel.

6. Regarding the second submission, I do not consider it is absolutely necessary that every witness shall be examined before the complaint is taken on file. If the statement given by the complainant makes out an offence, the Magistrate is certainly within his power to take the complaint on file.

Hence, the second submission fails.

7. Regarding the third submission, I have to state the relevant dates. According to the complaint, the complainant sent a notice on August 25,

1993. The reply by the accused was on September 7, 1993. This complaint was filed on October 1, 1993. It is within a period of 45 days even

from the date of issue of the notice. While so, the complaint is well within time. It is not necessary that the date of service of the notice on the

accused should be specifically stated in the complaint. In view of the above, the petition does not deserve admission and shall stand dismissed.