

(2009) 11 MAD CK 0106

In the Madras High Court

Case No : Criminal Original Petition No. 3982 of 2005 and Criminal M.P. No. 1566 of 2005

Brij Kishore A. Mehta

APPELLANT

Vs

Aditya Securities Limited

RESPONDENT

Date of Decision : 02-11-2009

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2010) 1 LW(Cri) 127

Hon'ble Judges : K. Mohan Ram, J

Bench : Single Bench

Advocate : C. Vijayakumar, for the Appellant; V. Perarasu, Amicus Curiae, for the Respondent

Judgement

K. Mohan Ram, J.—The Petitioner, who is the accused in C.C. No. 4317 of 2001 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai, who is facing trial for an alleged offence u/s 138 of the Negotiable Instruments Act, has filed the above Criminal Original Petition seeking to quash all further proceedings therein.

2. A perusal of the complaint shows that towards the amount due to the Respondent, the Petitioner is said to have issued a cheque bearing No. 267192, dated 07.08.2000 drawn on Tamilnad Mercantile Bank Ltd., Broadway, Chennai, for a sum of Rs. 1,25,000/- in favour of the Respondent. When the said cheque was presented on 07.02.2001 with the payee bank for encashment, the same was returned by the drawee payee with an endorsement "insufficient funds". After complying with the statutory requirements, the complaint has been filed and the same has been taken on file. Being aggrieved by that the above Criminal Original Petition has been filed.

3. Heard the learned Counsel on either side.

4. Learned Counsel for the Petitioner submitted that admittedly the cheque in

question is dated 07.08.2000 and the same has been presented for encashment on 07.02.2001 and the same has reached the drawee bank on 10.02.2001 much beyond the period of validity of the cheque and therefore the learned Counsel submitted that the complaint ought not to have been taken on file.

5. On the aforesaid submissions, the learned Counsel for the Respondent was heard, who also fairly submitted that the cheque in question has reached the drawee bank only on 10.02.2001, much beyond the period of validity of the cheque in question.

6. I have considered the said submissions made by the learned Counsel on either side.

7. When admittedly the cheque in question has reached the drawee bank beyond its period of validity i.e., on 10.02.2001, the same has been rightly returned by the banker though with an endorsement "insufficient funds". In a decision reported in AIR 2001 S C 1161 (Shri Ishar Alloys Steels Ltd. v. Jayaswals NECO Ltd.), the Apex Court has laid down that the cheque is always to be presented to the drawer's bank on which the cheque is issued and the payee of the cheque has the option to present the cheque in any bank where he has his account but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque in the drawee or payee bank on which the cheque is drawn within the period of six months from the date on which it is shown to have been issued.

8. Therefore, when admittedly the cheque in question has reached the drawee bank only on 10.02.2001, that is, after the validity period of the cheque is over, the complaint ought not to have been taken on file by the learned Magistrate.

9. For the aforesaid reasons, all further proceedings in C.C. No. 4317 of 2001 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai, is hereby quashed and the above Criminal Original Petition is allowed. Consequently, the connected CrI.M.P is closed.