
(1992) 04 MAD CK 0004
In the Madras High Court
Case No : Criminal M.P. 7863 of 1990

I.J. Mathias

APPELLANT

Vs

Cholamandalam Investments and Finance Co. Ltd.

RESPONDENT

Date of Decision : 06-04-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1992) LW(Cri) 200

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : G.R. Edmund, for the Appellant; K.S. Rajagopalan, for the Respondent

Final Decision : Allowed

Judgement

Arunachalam, J.—The petitioner, I.J. Mathias, is A2 in C.C.No.5600 of 1990, pending on the file of the Chief Metropolitan Magistrate

Madras. On a private complaint instituted by the respondent, the petitioner, along with two others, is being prosecuted for having allegedly

committed an offence punishable under S.138 of the Negotiable Instruments Act, Act 66 of 1988.

2. The allegations in the complaint show, that the firm Sanjeevani Fodder Production Private Limited, shown as A1 in the complaint, issued a

cheque dated 7.11.1989 in favour of the respondent for Rs. 3,40,807.47 on the Central Bank of India, Madras. The cheque was in respect of

dues for the bills of A1 company discounted by the respondent in terms of an agreement. On 26.2.1990, the respondent presented the cheque for

collection through their bankers. On the same day, the cheque was returned with an endorsement ""Exceeds arrangements"". The respondent issued

a notice to Fometa India Machines Private Limited, a sister concern of AI, in which concern also, the petitioner was the financial controller. Since there was no compliance to the demand for payment, the impugned prosecution was initiated. In this petition preferred under S.482 of the Code of Criminal Procedure to call for the records and quash the pending prosecution as not maintainable and an abuse of process of court, in so far as it concerns the petitioner, Mr. G.R. Edmund, learned counsel appearing on behalf of the petitioner contended, that under S.138(b) of the Act, the respondent ought to have made a demand for the payment of the amount of money covered by the cheque by giving a notice in writing to the 1991 drawer of the cheque within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid and if the drawer of such cheque failed to make payment of the money to the payee or as the case may be to the holder in due course within fifteen days of the receipt of the said notice, then the Magistrate could have taken cognizance of the offence punishable under S.138 of the Act within One month of the date on which the cause of action had arisen. Such notice was not given to the drawer, and there was no dispute about that. On this contention, I have heard Mr. K.S. Rajagopalan, learned counsel appearing on behalf of the respondent. He brought to my notice the Judgment of Padmini Jesudurai, J. in K. Krishna Bai v. Arti Press and submitted that the trend of the decision would indicate that if the debt or liability towards which cheque was issued was a legally enforceable debt or liability, that would suffice and it need not necessarily be a debt or liability of the person who had actually drawn the cheque. In that event, the argument was, issue of notice to the sister concern would be sufficient compliance of S.138(b) of the Act. I have carefully considered the rival contentions urged. Padmini Jesudurai, J. in the aforestated case, did not have occasion to consider the affect of S.138(b) and (c) of the Act and the effect of the mandate contained therein. The facts were different and the learned Judge had to consider whether the person sought to be prosecuted was in charge of and responsible for the conduct of the business of that company. Ss.138 (b) and (c) make it abundantly clear that the payee or the holder of the cheque in due course, as the case maybe, before initiating a prosecution, must mandatorily make a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the

cheque, within 15 days of the receipt of information by him, from the bank regarding the return of the cheque, as unpaid. On such notice being issued, the drawer of the cheque will have an opportunity to comply with the demand and make the payment of the said amount of money within fifteen days of the receipt of the said notice. Only in the event of non-compliance of the demand made, under S.142(b) of the Act, if a complaint is made within one month of the date on which the drawer of the cheque had not complied with the demand, the Magistrate shall take cognizance of an offence punishable under S.138 of the Act. When it is admitted, that notice was not issued to the drawer of the cheque but to another company, a different legal entity, it is apparent that the mandate of S.138 (b) and (c) of the Act had not been complied with. Not only on the provisions of the Act but also on principles of natural justice, the drawer of the cheque must have an opportunity to comply with the demand made, before a prosecution could be launched. That not having been admittedly done, pending prosecution cannot be allowed to survive any longer. In that view, this petition is allowed and all further proceedings in C.C.5600 of 1990 pending on the file of the Chief Metropolitan Magistrate Court, Madras shall stand quashed in so far as it concerns the petitioner.