
(2004) 03 MAD CK 0237
In the Madras High Court
Case No : Criminal R.C.No. 2032 of 2002

M. Murugan

APPELLANT

Vs

Queen Jhansi Vetrikodi

RESPONDENT

Date of Decision : 10-03-2004

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2005) 1 ALD(Cri) 20 : (2004) 3 BC 242 : (2005) 127 CompCas 934 : (2004) CriLJ 3184 : (2004) 2 LW(Cri) 600

Hon'ble Judges : A. Packiaraj, J

Bench : Single Bench

Advocate : N. Ananthapadmanabhan, for the Appellant; R. Karuppan, for the Respondent

Final Decision : Dismissed

Judgement

A. Packiaraj, J.—This revision has been filed against the order passed by Judicial Magistrate V, Madurai in CrI. M.P. No. 2453 of 2002 in C.C.No.766 of 2001, discharging the respondent of offence u/s 138 of the Negotiable Instruments Act.

2.The circumstances under which the said order came to be passed is as follows:

a)A complaint has been given against the accused/ respondent for an offence u/s 138 of the Negotiable Instruments Act on the averment that the cheque issued by the accused/respondent for the discharge of a liability, on presentation the cheque was dishonoured with an endorsement "Payment stopped". Thereafter a telegram was sent by the complainant/petitioner to the accused/respondent intimating her about the cheque being dishonored on the above said ground. The accused/respondent did not reply within the stipulated time. It has also been stated in the complaint that a statutory notice was issued on 26.10.2001 and the same has been received by the accused/respondent on 27.10.2001 and the prosecution was launched, since the accused/respondent neither paid the money nor replied to the said notice.

b) The Magistrate, who took cognizance of the offence had issued process. The accused/respondent on appearance before the Court took a preliminary objection stating that no statutory notice was given by the complainant/petitioner, as contemplated under the Negotiable Instruments Act. Hence prayed that the complaint be dismissed in-limine. It is her further case that the cheque in question bearing No. 016290 had been stolen from her possession by some miscreants and a complaint in respect of the same had also been given to the concerned police station and that consequently, she does not owe any liability to the complainant/petitioner.

c) A counter was filed by the complainant/petitioner stating that the accused/respondent herself has by way of her letter dated 04.12.2001 accepted the receipts of the notice contemplated u/s 138 of the Negotiable Instruments Act and consequently, the said ground has no merits. As far as the two grounds namely that the cheque has been stolen from her possession and that she is not liable to pay anything to him, are matters to be decided only by the trial Court.

d) However, the trial Court accepted the contention of the accused/respondent and discharged her of the offence u/s 138 of the Negotiable Instruments Act. It is against the said order, the present revision has been filed.

3. The learned counsel for the petitioner would now argue that the stand taken by the accused in the petition filed before the lower court is contrary to facts. It has been mentioned in the complaint that a statutory notice has been issued and it has been received by the accused on 26.10.2001 and acknowledged by her on 27.10.2001. However, it has to be noted that it is a telegram with all details and consequently, to say that she did not receive any statutory notice is contrary to the facts and cannot be a ground to dismiss the complaint. But according to the accused, she admits having received a telegram from the complainant on 27.10.2001 which had been sent to her on 26.10.2001 by the complainant and this, in the eye of law, cannot be construed as a statutory notice contemplated under the Negotiable Instruments Act. As far as the notice is concerned, it is the admitted case of the prosecution that the complainant sent a notice only on 09.12.2001 though he fairly concedes it is not a notice for the initiation of prosecution.

4. So the question that arises for consideration is whether the telegram dated 26.10.2001 can be construed as a statutory notice contemplated under the Negotiable Instruments Act or not ?

5. According to the learned counsel for the petitioner, the telegram contains a wealth of details which is as follows:-

"Madam

You received Rs. 4,00,000/- (Rupees Four Lakhs only) from me as hand loan in the first week of march 2001 promising to repay the paid amount after six months to repay the said amount. You issued a cheque dated 10.10.2001

bearing serial no 016290 Indian Bank Kadayanallur duly signed by you for the said amount (Rs.4,00,000) and handed over the same to me upon your request I have presented the said cheque in my bank State Bank of India Madurai city Branch on 10.10.2001 for collection The same cheque issued by you returned with an endorsement payment stopped by drawer on 23.10.2001 now you are hereby informed that the said cheque has got dishonoured

Please make the entire payment mentioned in the cheque to me within 15 days on receipt of this notice failing I will take all legal action against you and will further hold you liable for all the cost and consequences thereof

m murugan 2b muthuramalinga thevar st

valaithopu madurai"

Therefore, when this contains so much of details, it has to be necessarily construed as a notice and since the payment has not been paid within 15 days thereof, prosecution is justified to be launched.

6.In support of his argument, to say that a notice need not be necessarily in writing, the learned counsel has relied on a decision of the Supreme Court in SIL IMPORT USA Vs. EXIM AIDES SILK EXPORTERS, BANGALORE 1999 SCC 600, wherein Their Lordships say that once notice had been given by FAX and again if it has been confirmed by a Registered Post, the period of limitation is deemed to have started from the date of receipt of the FAX message and not the Registered Post. From this the learned counsel wants this Court to infer that in the present case, the telegram which has been issued on 26.10.2001 can be construed as a notice.

7.Two questions arise in this matter.

1.Whether a telegram can be equated to a FAX message?

2.Whether the telegram had been confirmed by a registered post ?

8. As far as the first point is concerned, no doubt, the contents of the telegram may contain all particulars. But the fact remains that the respondent has not received any intimation duly signed by the complainant. On the other hand, it contains a script of what the complainant has at his end sent to the postal department and the postal department in turn sent the message to the receiving end by Morse Code and the receiver there converts this Code into words and sends it to the respective addressee. Whereas a FAX message when faxed, the other end, namely, the addressee receives it verbatim of the message including the facsimile of the signatures and the corrections if any. Therefore, in such circumstances, it is more authenticated than a telegram. Say for example as what happened in this case. A message has been given by the complainant to the accused via telegram. The postal authority had sent the Morse Code. At the receiving end or proposed person who sent the message to the receiving end has apparently made a mistake by typing the address of the complainant as M.

Murugan, 2 B Muthuramalinga Thevar St. Valaithoppu Madurai but the telegram has been sent by Murugan 2B Muthuramalinga Thevar St. Vilapuram, Madurai. But at the receiving end, the original of the telegram received by the accused reads as if it has been sent by Murugan, 2-B Muthuramalingam Thevar Street, Villapuram Madurai. Therefore, the residential address of the sender appears to be different. Hence the learned counsel for the respondent would submit a telegram can never be equated to a FAX message, since in a FAX message, such mistakes would not appear. Moreover, what has happened in this case that is the accused had sent a reply dated 09.11.2001 to the address mentioned in the telegram denying knowledge about the existence of such a person and that she has not had any contact or any dealing with the complainant. The letter apparently has been returned stating that there is no such addressee in the address mentioned in the telegram namely, Murugan, 2-B, Muthuramalinga Thevar, Villapuram, Madurai. Therefore, it is clearly seen that there is every room for the details to differ in the contents of the telegram between the sending place and the reaching point. Consequently, it may not be equated to a fax message.

9. As a matter of fact, there is yet another decision of this court reported in Pattabirama Reddy Vs. Nageshwara Reddy 2001 2 L.W 781, wherein it has been stated that a telegram cannot be accepted as a statutory notice, as it is only an unsigned or anonymous communication. In this context, a decision of the Supreme Court, though not under this Act but under Preventive Detention Laws is District Magistrate & Anr. Vs. G. Jothisankar 1993(2) Cri 1189, is relevant, wherein their Lordships have held that a telegram by itself is not an authenticated document, unless it is confirmed by a subsequent signed application. Therefore, in the present case, when the telegram has not been followed with any other letter or any other communication, it does not have the sanctity of a statutory notice, contemplated under the Negotiable Instruments Act and the decision cited by the petitioner referred earlier by me may not apply to the facts and circumstances of the case since the FAX message was followed by a registered post and the FAX has been duly authenticated. Therefore, in such circumstances, I have absolutely no hesitation to hold that there is no statutory notice as contemplated under the Negotiable Instruments Act.

10. The two questions posed by me are answered accordingly.

1. The telegram by itself cannot be construed a statutory notice and;
2. The telegram has not been authenticated by a subsequent letter, within the period of limitation.

11. Therefore, I see no merits in this revision and the same is hereby dismissed.