
(2000) 10 MAD CK 0054

In the Madras High Court

Case No : Criminal R.C. Case No. 1401 of 1998

Mayfair Knitting Industries Limited, Chennai

APPELLANT

Vs

G.P. Vijaykumara

RESPONDENT

Date of Decision : 11-10-2000

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2001) 1 ALT(Cri) 119 : (2000) 2 LW(Cri) 918

Hon'ble Judges : N. Dhinakar, J

Bench : Single Bench

Advocate : N. Chandra Raj, for the Appellant; R. Srinivas, for the Respondent

Final Decision : Dismissed

Judgement

N. Dhinakar, J.—The petitioner is the complainant in C.C. No. 3068 of 1997 on the file of XIII Metropolitan Magistrate, Egmore, Chennai, and he initiated the proceedings against the respondent/accused by way of a private complaint for an offence punishable u/s 138 of the "Negotiable Instruments Act" (hereinafter called "the Act") on an allegation that the cheque issued by the respondent, when presented with the Bankers, was returned unpaid on account of insufficiency of funds and that, the notice sent subsequently also did not evoke any response. The respondent appeared before the learned Magistrate and after the examination of one witness, filed a petition for discharge stating that the petitioner has not issued any statutory notice to the drawer of the cheque and that the notice dated 28.1.1997 is not in conformity with the provisions of Clause (b) of Section 138 of the Act. There was also another contention that the company, to whom the cheque was issued, was no longer in existence. The learned Magistrate accepted both the contentions and discharged the respondent. Hence, the present revision.

2. The learned Counsel appearing for the petitioner, even at the outset, states that he does not support the view of the learned Magistrate that the company, to whom the cheque was issued, is no longer in existence and hence, there can be

no prosecution. The learned Counsel for the petitioner, submits that the learned Magistrate has committed an error in holding that there was no notice to the drawer, since the petitioner has issued a notice on 28.1.1997. He drew my attention to the said notice, which is filed in the typed set of documents along with the revision. A perusal of the said notice indicates that it is addressed to M/s. Rainbow Creations, B-9, Brownstone Apartments, Mahalingapuram, Madras-600034, and the contents are as follows;

"This is to inform that the cheque issued by you bearing cheque No.145552 dated 21.9.1996 for Rs. 4,35,542.80 has been returned by our Banker stating that the same has not been honoured by you.

Please note you are requested to make payment for the same immediately within a week's time failing which the matter shall be referred by us to our legal department".

3. A perusal of the above notice clearly indicates that the notice was not actually issued to the drawer of the cheque, but was issued to M/s. Rainbow Creations, on whose behalf, according to the petitioner, the cheque was drawn by G.P. Vijaya Kumar, Clause (b) of Section 138 of the Act states that nothing in Section 138 of the Act will apply unless the payee or the holder of the cheque in due course, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the Bank regarding the return of the cheques as unpaid.

4. As I stated earlier, the notice is not issued to the drawer of the cheque as contemplated under Clause (b) of Section 138 of the Act, but it is stated to M/s. Rainbow Creations. Even if it is to be assumed that the notice to the company is the notice to the drawer of the cheque on the ground that the cheque was issued on behalf of the company, then the Court should consider whether the notice dated 28.1.1997 satisfied the requirements of Clause (b) of Section 138 of the Act. In my view, the notice dated 28.1.1997 does not satisfy the requirement of Clause (b) of Section 138 of the Act. A reading of the notice, which I have extracted earlier, clearly shows that the petitioner was only informing M/s. Rainbow Creations of his intention to intimate legal action if the amount is not paid and initiating legal action includes issuance of a notice under Clause (b) of Section 138 of the Act. In short by his letter dated 28.1.1997, he has only informed M/s. Rainbow Creations that he will initiate action by referring the matter to the legal department and under the circumstances, it has to be only held that the letter dated 28.1.1997 cannot be treated as a notice as contemplated under Clause (b) of Section 138 of the Act.

5. In that view of the matter, it is to be held that there was no statutory notice as contemplated under Clause (b) of Section 138 of the Act and the learned Magistrate has no jurisdiction to take the complaint in the absence of any statutory notice. The learned Magistrate was justified in discharging the

respondent/accused on this ground though not on the other ground. The revision, therefore, deserves to be dismissed,

6. In the result, the revision is dismissed.