
(1999) 02 MAD CK 0044

In the Madras High Court

Case No : Criminal O.P. No. 21900 of 1998 and Cri. M.P. No's. 10577 of 1998 and 339 of 1999

P.V.R.S. Manikumar

APPELLANT

Vs

Krishna Reddy

RESPONDENT

Date of Decision : 11-02-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204, 245(2), 313, 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (1999) 2 ALT(Cri) 182 : (1999) 3 CivCC 322 : (1999) CriLJ 2010 : (1999) 1 LW(Cri) 246 : (1999) 4 RCR(Criminal) 34

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : V. Sambamurthy, for the Appellant; C. Raghunatha Reddy and N.R. Elango, Government Advocate for Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—This is a peculiar case wherein both the petitioner/accused and the counsel for the accused are accused of

suppression of facts as well as misleading of the Metropolitan Magistrate Court, the Sessions Court and this Court.

2. The factual matrix, which are quite interesting and equally disturbing, are given below :-

(a) P.V.R.S. Manikumar, the petitioner herein, is the accused in C.C. No. 3316 of 1998 on the file of the VII Metropolitan Magistrate, George

Town, Chennai on a private complaint filed by Krishna Reddy, the respondent herein, for the offence u/s 138 of the Negotiable Instruments Act.

(b) According to the complaint, the accused gave two cheques dated 15-12-1997 and 31-3-1998 for Rs. 6,50,000/- and Rs. 7,25,920/-

respectively. The first cheque was towards the principal and the second cheque was towards the interest as reckoned up to 31-3-98. These

cheques were presented on 31-3-98 and the same were dishonoured on 2-4-98. On 6-4-98, the complainant sent a statutory notice demanding

the cheque amount, to the petitioner/accused.

(c) After receipt of the said notice on 17-4-98, the petitioner sent a reply without making any payment of the cheque amount. Then on 21-4-1998,

the complainant sent a rejoinder and even then, no payment was made. Therefore, within the time limit prescribed under the Act, the complainant

filed the said private complaint on 4-5-1998.

(d) The trial commenced on 27-8-98 on which date the chief examination of the complainant was completed and he was subjected to cross-

examination on 13-10-98, 3-11-98 and 4-11-98 by the counsel for the petitioner/accused.

(e) On 4-11 -98, after completion of the cross-examination of the complainant, the counsel for the petitioner filed a petition in CrI. M.P. No. 9805

of 1998 u/s 245(2), Cr. P.C. for discharge. Though already trial had commenced and the examination of P.W.I was over, the trial Court

entertained the said petition for discharge and permitted the complainant to file a counter. The counsel for the parties were heard by the trial Court.

Ultimately, the said application was dismissed on 18-11-98.

(f) Thereafter, P.Ws. 2 and 3, the officials of the bank, were examined on 25-11 -1998 and the prosecution side was closed. Thereafter, the case

was posted on 10-12-98 for questioning the accused u/s 313, Cr. P.C.

(g) On 24-11 -98, the petitioner/accused filed a Revision before the Sessions Court in CrI. R.C. No. 213/98 challenging the order dated 18-11-

1998 dismissing the discharge petition. Though this was admitted by the learned Sessions Judge, no stay was granted and the matter was posted

on 17-12-98.

(h) On coming to know about the pendency of the Revision before the Sessions Court, the complainant filed a petition before the Sessions Court

on 30-11 -98 to advance the hearing of CrI. R.C. No. 213/98 from 17-12-98 to an earlier date. In that, notice was ordered returnable by 9-12-

98.

(i) In the meantime, on 8-12-98, the petitioner/accused filed the present petition for quashing before this Court and obtained an order of stay of the proceedings of the trial Court on the same day.

(j) When the Revision was posted on 9-12-98 for fixing an earlier hearing date, the counsel for the petitioner/accused appeared before the

Sessions Court and requested time for filing counter. However, the Sessions Court was not informed about the stay order dated 8-12-98 granted

by the High Court. The Sessions Court by giving time for counter posted the matter on 17-12-98.

(k) On 10-12-98, when the matter came up for questioning before the trial Court, at the request of the counsel for the petitioner, this matter was

adjourned to 22-1-99. On this date also, the trial Court was not informed about the stay order dated 8-12-98 granted by this Court.

(l) On 17-12-98, the Revision before the Sessions Court came up for final disposal, However, it was adjourned to 21-12-98. On that date also,

the Sessions Court was not informed about the stay granted by the High Court. On 21-12-98, the Revision was taken up for final disposal and

heard by the Sessions Court. Even on that date also, the counsel for the petitioner did not inform about the stay order dated 8-12-98 passed by

this Court. Ultimately, the Sessions Court dismissed the Revision on 24-12-98.

(m) Since the Revision was dismissed by the Sessions Court, the complainant filed a petition before the trial Court to advance the hearing of the

case from 22-1-99 to an earlier date. This petition was posted on 7-1-99 after ordering notice. Only on 7-1-99, the counsel for the petitioner filed

a memo informing about the stay order dated 8-12-98 granted by this Court.

(n) That is how the complainant has been constrained to file a petition in CrI. M.P. No. 339/ 99 requesting this Court to vacate the order of stay

dated 8-12-98 giving the details of the suppression of material facts before this Court, while obtaining the order of stay.

3. As regards the factual details relating to the dates of hearing in various Courts, there is no denial on the part of the counsel for the

petitioner/accused. Therefore, before deciding the propriety of the conduct of the counsel for the petitioner and the petitioner in relation to

misleading of the Court, it is desirable at the threshold to decide about the points urged in this petition for quashing.

4. The counsel for the petitioner would contend that the proceedings are liable to be quashed on three grounds:-

(1) u/s 138 of the Negotiable Instruments Act, the demand shall be made through the statutory notice only for the cheque amount and not more

than that. In the instant complaint, the demand has been made not only for the cheque amount, but also for the interest amount.

(2) As per Section 138 of the Negotiable Instruments Act, 15 days" time from the date of receipt of statutory notice has to be given for making

payment of the cheque amount, whereas in the notice it was mentioned only 15 days" from the date of issue of the notice and as such, the notice is

invalid.

(3) To invoke Section 138 of the Negotiable Instruments Act, the basic ingredient is the issuance of cheque towards discharge of the existing

liability. In the instant case, there is no averment regarding the existence of liability. Therefore, the complaint has to be held invalid.

5. In order to substantiate this point, the counsel for the petitioner/accused has cited the following decisions :-

(1) Gopa Debi Ozha Vs. Sujit Paul, - Calcutta High Court;

(2) Dickson Prem Raj v. R. Manoharan 1994 MLJR 360 - Madras High Court;

(3) Swastik Coaters Pvt. Ltd. Vs. Deepak Brothers and Others, - Andhra Pradesh High Court;

(4) Uplanche Mallikarjun v. Rat Kanti Vimala 1997 Cri LJ 4237 - Andhra Pradesh High Court;

(5) Narang Industries Ltd. v. Ashok Leyland Finance Ltd. 1998 (I) CTC 229 - Madras High Court;

(6) B. Mohan Krishna Vs. Union of India and Others, - Andhra Pradesh High Court;

(7) C.V. Alexander v. Joseph Chacko (1995) 82 Comp Cas 368 - Kerala High Court;

(8) K.T. Kuriyan v. K.K. Sreedharan 1993 MWN (Dishonour of Cheques) Ker. - Kerala High Court;

(9) K. Krishna Bai v. Arti Press 1991 (2) MWN 110 -- Madras High Court;

(10) K. Kumar v. Bapsons Footwear 1994 (1) MWN (Cr) 114 - Madras High Court; and

(11) A.C. Raj Vs. M. Rajan and Another, - Kerala High Court;

6. Per contra, the counsel for the complainant/ respondent herein, would submit that the details of the liability have been very much mentioned in

the complaint as well as in the notice and that the demand of the cheque amount together with further interest up to the date of payment cannot

make the statutory notice invalid and that 15 days" time for making payment of the cheque amount is mentioned in the notice itself.

7. On going through the entire records, I find that these three points were already raised before the trial Court in the discharge application and in

the Revision filed before the Sessions Court which were dealt with by the respective Courts.

8. As regards the first point, this Court has already decided in very many decisions that the complainant, being entitled to initiate both the civil suit

for recovery of the amount and the criminal proceedings for non-payment of the cheque amount, could very well issue notice demanding the

cheque amount plus interest amount so as to enable him to file a suit for recovery of the entire amount. As long as the demand of the cheque

amount was made in the statutory notice, it cannot be contended that the entire notice becomes invalid merely because the interest amount has

been added. This view of mine is fortified by the decision of this Court in S. Kiran v. L.C. Corporation (1994) II Cur Cri R 858.

9. As regards 15 days" time to be given in the notice for payment of the cheque amount, this Court has held in Manivannan, Prop. Satya Hosieri

Garments v. Ever King Garments 1994 (3) Cri 262, that the mentioning of 15 days" time for payment is not necessary in the notice, as it is not

contemplated in the section.

10. u/s 138(b) of the Negotiable Instruments Act, the payee shall make a demand for the payment of the cheque amount by giving a statutory

notice to the drawer of the cheque within fifteen days of the receipt of the information about the dishonour. Section 138(c) would provide that the

drawer must make the payment within fifteen days of the receipt of the notice. u/s 142(b), the complaint is to be made within one month from the

date on which the cause of action arises under clause (c) of the proviso to Section 138. Therefore, these provisions do not contemplate that the

notice must indicate fifteen days" time for making payment.

11. Therefore, the mentioning by payee the period for making payment in the

notice is fifteen days or less does not matter. The complainant gets the right of approaching the Court only after fifteen days. Without mentioning any time for payment in the notice, if the complainant approaches the Court before the expiry of the fifteen days from the date of receipt of the notice, then, the complaint would become premature and the proceedings would be vitiated.

12. Similarly, without mentioning any time in the notice, if the complainant approaches the Court after fifteen days on receipt of the notice, the complaint would become invalid. In the same way, if he mentions less than fifteen days, but chooses to file the complaint subsequent to the expiry of the 15 days, it would not affect the complainant's right to launch the prosecution, inasmuch as he waited for fifteen days and then exercised his right of filing a complaint before the Court only after the expiry of fifteen days. Therefore, the second ground also fails.

13. As regards the third ground, it is submitted that there is no material to show the existing liability. This is factually incorrect. In the complaint, it is specifically mentioned that the petitioner/accused issued two cheques dated 31-3-98. The first cheque was towards the discharge of the principal and the second cheque was towards discharge of the dues of interest up to 31-3-1998. Apart from the complaint, this has been stated in the notice also.

13-A. Therefore," none of the grounds urged by the learned counsellor the petitioner has any substance, so as to warrant this Court to interfere with the proceedings pending before the trial Court.

14. Let me now go into the other aspect which reflects various disturbing features, as pointed out by the counsel for the complainant/respondent herein.

15. The complainant filed the complaint against the petitioner on 4-5-98. P.W. 1 was examined after supply of copies to the accused. The trial commenced by examining P.W. 1 in-chief and cross on 27-8-98, 13-10-1998, 3-11-98 and 4-11-98. The deposition copies filed before this Court would clearly show that the complainant was subjected to searching cross-examination by the counsel for the petitioner. It shall be pointed out that on receipt of the process u/s 204, Cr. P.C., the accused never chose to file any application before the trial Court to recall the process by

raising these questions. As a matter of fact, he allowed the trial to commence with P.W. 1 from 27-8-98, P.W. 1 was cross examined on 13-10-

98, 3-11-98 and 4-11-98. But, the wisdom had dawned upon the counsel for the petitioner only on 4-11-98 to file a petition for discharge, that

too, u/s 245(2), Cr. P.C. before the trial Court, after completion of evidence of P.W. 1.

16. The filing of petition u/s 245(2), Cr. P.C. itself is not permissible, since the said Section would relate to warrant cases, whereas the instant

proceedings would relate to summon cases. However, the learned Magistrate in order to give opportunity to the petitioner entertained the said

petition and allowed the complainant to file his counter which was filed on 6-11-98. The said petition was dismissed on 18-11-98. After dismissal,

P.Ws. 2 and 3 were examined on 25-11-98. Thereafter, the case was posted on 10-12-98 for questioning u/s 313, Cr. P.C.

17. At this stage, the petitioner filed a Revision before the Sessions Court against the order dismissing the discharge petition and the same was

admitted. However, no stay was granted. Without mentioning all these things, the counsel for the petitioner moved this petition for quashing after

obtaining permission for lunch motion on 8-12-98 and obtained an order from this Court on the same date staying the entire further criminal

proceedings in C.C. No. 3316/98 on the file of the VII Metropolitan Magistrate, George Town, Chennai.

18. In fact, the very same grounds raised in this petition were also raised in the Revision pending before the Sessions Court. In this petition, there is

no reference either about the filing of the discharge petition before the trial Court and its dismissal or about the pendency of the Revision before the

Sessions Court. This would clearly show that since no stay was granted by the Sessions Court pending Revision, the petitioner wanted to stall the

proceedings in the trial Court somehow or the other. This only must have prompted the counsel for the petitioner to file a petition for quashing

before this Court and obtained stay by moving a lunch motion.

19. In the meantime, on 30-11-98, the complainant/respondent herein filed a petition before the Sessions Court to advance the hearing date and

the same was posted ordering notice returnable by 9-12-98. The counsel for the petitioner appeared before the Sessions Court on 9-12-98 and

asked time for counter, but, however, he did not think it fit to inform the Court about the stay granted by this Court. Even when the matter was taken up by the trial Court for questioning the accused on 10-12-98, the counsel never cared to inform this to the trial Court. When the Revision came up for final disposal on 17-12-98 and 21-12-98, the counsel for the petitioner argued the Revision without informing the Sessions Court about the stay order passed by the High Court.

20. It shall be noticed in this context that this Court passed an order on 8-12-98 staying the entire further proceedings in pursuance of C.C. No.

3316/98 on the file of the trial Court. Therefore, this stay would cover the proceedings before the Sessions Court also, as they arise out of (he

proceedings pending before the trial Court. In fact, the Sessions Court was allowed to dispose of the Revision, despite the stay order of the High

Court. The counsel for the petitioner ought to have informed the Sessions Court or at least he should have asked for permission to withdraw the

Revision by stating the reason that he filed CrI. O.P. before the High Court challenging the proceedings before the trial Court and obtained stay.

21. For the reason best known to the counsel for the petitioner, he neither informed the Sessions Court nor the trial Court about the stay order

passed by this Court. Ultimately, on 24-12-1998, the Sessions Court dismissed the Revision. On that date also, the stay order was not informed.

Thereafter, on 31 -12-1998 the complainant/respondent herein filed a petition before the trial Court to advance the hearing from 22-1-1999 to an earlier date.

22. As a matter of fact, this Court directed the Office to issue notice to the complainant in this petition on 8-12-1998 itself. Without knowing all

these developments, the complainant innocently and scrupulously approached the trial Court seeking for the early hearing. On entertaining the said

petition, the trial Court ordered notice to the accused returnable by 7-1-1999. Only on 7-1-1999, the counsel for the accused had to let out the

cat from the bag and to file a memo before the trial Court mentioning about the stay granted by the High Court, that is, exactly after a month.

23. These things would show that the counsel has taken extra interest for his client and tapped every forum simultaneously and exhausted all the

remedies at one stroke. The conduct of the counsel for the petitioner as well as

the petitioner in approaching this Court and obtaining an order of stay even without mentioning relevant and material particulars is highly reprehensible. The counsel for the petitioner ought not to have been the party for the contemptuous act committed by the petitioner. The counsel is expected only to give legal advice. He cannot be expected to act in such a way in order to get some order or the other in some way or the other by suppressing the actual facts, which are very much known to him.

24. This conduct on the part of the petitioner/ accused as well as the counsel would not only injure the other party in the litigation, but also would cause most mischievous consequence to the administration of the criminal justice. This would certainly be termed as an absolute abuse of Court's process.

25. As has been held in Wright v. Bennett (1948) 1 All ER 227, taking of successive actions covering the same ground and litigating over again the same question is clearly an act of abuse of the process of the Court.

26. As pointed out by the Apex Court in Chandra Shashi Vs. Anil Kumar Verma, , the stream of administration of justice has to remain unpolluted so that purity of Court's atmosphere may give vitality to all the organs of the State.

27. Filing of any petition to stall the judicial proceedings in any Court of law by suppression of facts exposes the intention of the party concerned in preventing the course of justice. Anyone, who may be a client or a counsel, who makes an attempt to impede or undermine or obstruct the free flow of the holy stream of justice by resorting to the filing of these petitions, would cause serious damage to the institution.

28. The counsel is endowed with noble duties. He has not only got duty towards his client, but also to his colleague. He has not only got duty towards the Court, but also towards society. Therefore, he should see the case of his client conducted fairly and honestly. The Advocates are responsible to the Court for the fair and honest conduct of the case. In matters of this kind, they are bound to exercise an independent judgment and to conduct themselves with a sense of personal responsibility.

29. According to the Supreme Court in Harishankar Rastogi Vs. Girdhari Sharma and Another, , the Bar is not different from the Bench. They are the two sides of the same coin. Bar is an extension of the system of justice;

lawyer is an officer of the Court. He is a master of an expertise, but more than that, kindful to the Court and governed by high ethics. The success of judicial process often depends on the service of the legal profession.

30. Normally, in dealing with the application for quashing, etc., while interim orders, the Court naturally takes the facts and grounds contained in

the petition at their face value and the oral submission made by the counsel before this Court. Therefore, it may not be fair and proper on the part

of the counsel to betray the confidence of the Court by making statements which are misleading.

31. Mr. N. R. Elango, the learned Government Advocate, who was asked to assist in this matter as Amicus Curiae, has cited the judgment of the

Supreme Court in Pandurang Dattatraya Khandekar Vs. Bar Council of Maharashtra, Bombay and Others, , wherein it has been held that the

members of the legal profession should stand free from suspicion and that nothing should be done by any member of the legal fraternity which might

tend to lessen any degree of confidence of the public in the fidelity, honesty and integrity of the profession.

32. As the Apex Court would point out, giving a wrong legal advice cannot be said to be unethical, but giving an improper legal advice cannot be

said to be ethical. When a client consults with a lawyer for his advice, the client relies upon his requisite experience, skill and knowledge as a

counsel. In such a situation, the counsel is expected to give proper and dispassionate legal advice to the client for the protection of his interests.

33. In the instant case, having challenged the order dismissing the discharge petition through Revision before the Sessions Court, the counsel ought

not to have moved this Court u/s 482, Cr. P.C. challenging the very same proceedings. Even assuming that the filing of this petition before this

Court u/s 482, Cr. P.C. could be the product of the wrong legal advice, the non-mentioning in this Court of the pendency of the Revision before

the Sessions Court, and non-mentioning of the stay order passed by this Court before the Sessions Court and the trial Court would definitely be

considered to be an improper legal advice.

34. However, the learned counsel for the petitioner filed an affidavit dated 3-2-1999 before this Court tendering unconditional apology for what

are all he had committed in this matter earlier. He would give various circumstances in the said affidavit as to how he was not able to give those details to the respective Courts.

35. One portion of the affidavit filed by the counsel is quite relevant, which is as follows :-

I regret to say that I am standing as an accused before this Hon''ble Court as said by Thiruvalluvar

(Vernacular matter omittedEd.)

I humbly submit that I submit my unconditional apology for my act and I undertake that I would be very careful in touching the provision of law and assure that I would not commit such error or mistake and never do any illegal act which amounts to criminal or civil contempts in future.

36. The above portion of the affidavit really touches my heart and this would clearly reveal as to what extent the counsel for the petitioner felt sad

and sorry for the happenings referred to above. There is a popular saying :

To err is human;

To forgive is divine.

I may add one more sentence to it:

To realise and to reform, is also divine.

37. The great Tamil Saint Thiruvalluvar says :

(Vernacular matter omittedEd.)

Wield fast the rod, but gently lay. This strict mildness prolongs the sway.

38. Therefore, once the counsel for the petitioner realises his mistake, then this Court would consider the act of the counsel sympathetically without resorting to any other action against the counsel.

39. As regards the merits of this petition, as discussed in earlier paragraphs, I am of the view that this petition for quashing is liable to be dismissed and accordingly, the same is dismissed, as devoid of merits. Consequently, the connected Cri. M.Ps. are also dismissed.

40. The trial Court is directed to continue the trial. The petitioner is directed to co-operate with the trial by appearing before the Court regularly to enable the Court to dispose of the matter in accordance with law at an early date.

41. Before parting with this case, this Court places on record the assistance

rendered by Mr. N. R. Elango, Amicus Curiae.