
(2009) 08 MAD CK 0054

In the Madras High Court

Case No : Criminal O.P. No. 24064 of 2007 and M.P. No. 1 of 2007

Rathimala, K. Sakthi Raghul and K. Sakthi Gowtham

APPELLANT

Vs

S.P. Srinivasan

RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 142

Citation : (2009) 08 MAD CK 0054

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : Abudu kumar Rajarathinam, for the Appellant; T. Murugamanickam, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The petitioners/accused 3 to 5 have filed the above Criminal O.P. No. 24064 of 2007 to call for the records of the

complaint in C.C. No. 348 of 2007 pending on the file of the Judicial Magistrate No. I, Erode, and quash the same.

2. The respondent/complainant filed the complaint in C.C. No. 348 of 2007 before the Judicial Magistrate I, Erode against 5 accused persons on

an alleged offence u/s 138 r/w. 142 of Negotiable Instrument Act. The ingredients of the complaint is that the 1st accused, namely Bharat Refiners

and Oil mills is a partnership concern, accused 2 to 6 are the partners of the said 1st accused concern. The accused 2 to 6 are in charge and

responsible for the day today affairs of the said accused partnership concern. On 08.04.2007, the accused have borrowed a sum of Rs. 5 Lakhs

from the complainant and promised to repay the same. On 07.05.2007, the accused issued a post dated cheque for Rs. 5 Lakhs, the cheque

bearing No. 7948763 dated 07.05.2007, drawn on the Dhanalakshmi Bank Ltd., Erode Branch. The complainant presented the cheque for

collection through his bankers, Indian Bank Ltd., Periyasemur Branch, Erode and the same was returned on 08.05.2007 with the endorsement as

funds insufficient"" .

3. Thereafter, the complainant has issued a registered Lawyer notice to the accused to call upon him to pay the "dishonoured" cheque amount of

Rs. 5 Lakhs. The said notice was returned on 24.05.2007 as ""not claimed"". Hence, the accused have committed an offence u/s 138 r/w Section

142 of the Negotiable Instrument Act. Supporting his case, the complainant has furnished five documents and 3 witnesses are mentioned.

4. The petitioners/accused 3,4 and 5 have filed the quash petition stating that the 1st petitioner is the wife of Kamalanathan, who is a director of the

partnership firm and she is only a house wife. The 2nd and 3rd petitioners are sons of the 1st petitioner and the 2nd petitioner is doing business and

residing separately at Dindugal; the 3rd petitioner is an engineering student and studying at an engineering college.

5. The petitioners further submit that they are not signatories to the cheque issued by v. Kamalanathan, who is the active partner of the partnership

firm. Further, the cheque was only issued as a security. The mere vague allegation that the petitioners were in charge and responsible for the day

today affairs of the partnership firm will not suffice to satisfy requirement of Section 141 of the Negotiable Instruments Act. Further, the petitioners

have alleged that they are not vicariously liable and are only sleeping partners. Hence the petitioners have filed this quash petition.

6. The learned Counsel for the petitioners have filed 5 citations, in support of their case, in

1. Saroj Kumar Poddar Vs. State (NCT of Delhi) and Another,

2. 2007 (2) Crimes 352 (SC) N.K. Wahi v. Shekar singh and Ors.

3. Capt. D. Karunakar, Director, Manito Electronics Pvt. Ltd., Lt.Cl. A.C. Viswanathan, Director, Manito Electronics Pvt. Ltd., Mr. Cherian

Varghese, Director, Manito Electronics Pvt. Ltd., Geojith, Securities Ltd. and Mr. Suprabhat Lala, Director, Manito Electronics Pvt. Ltd.,

Geojith, Securities Ltd. Vs. Tamil Nadu News Print and Papers Ltd.,

4. Monaben Ketanbhai Shah and Another Vs. State of Gujarat and Others,

5. Sabitha Ramamurthy and Another Vs. R.B.S. Channabasavaradhya,

7. The learned Counsel for the respondent has produced a citation of a judgment, in support of his case in N. Rangachari Vs. Bharat Sanchar

Nigam Ltd., .

8. This Court, after well considering the ingredients of the complaint and contention of the petitioner and after hearing arguments advanced by the

learned Counsel for petitioner and learned Counsel for the respondent, the Court is of the view that the Learned Magistrate, after applying his mind

has taken the case on his file. Further, the case has been filed on the basis of dishonoured cheque. For the issuance of cheque, there is no dispute

between the parties. Even though the petitioners are sleeping partners, they are liable to cooperate in the said case. The petitioners' citations are

not applicable in the present case. So, their presence is necessary in this case at the time of trial. Therefore, the Criminal Original Petition has got to

be dismissed. Accordingly, it is dismissed. Consequently, connected Miscellaneous Petition is closed.