
(2011) 11 MAD CK 0284

In the Madras High Court

Case No : Criminal O.P. No's. 30269 and 30270 of 2010 and M.P. No. 1+1 of 2010

Subhiksha Trading Services Ltd. Cabin A, 2nd Floor, Habib Complex, No. 5, Durgabai Deshmukh Road, R.A. Puram, Chennai-600028 and R. Subramanian

APPELLANT

Vs

M/s. HDFC Bank Ltd.

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Constitution of India, 1950 — Article 141
Negotiable Instruments Act, 1881 (NI) — Section 138, 20

Citation : (2012) 1 BC 223 : (2012) 1 LW(Cri) 586

Hon'ble Judges : A. Arumughaswamy, J

Bench : Single Bench

Advocate : N. Natarajan, S.C. for M/s. Prakash Goklaney, for the Appellant; K. Rajeskar, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice A. Arumughaswamy

1. Petitioners are accused in C.C.Nos. 8620 and 8621 of 2010 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai and the respondent is the complainant.

2. The first petitioner is a registered company and the second petitioner is the Managing Director of the first petitioner company. The said company availed various credit facilities from the respondent/complainant commercial bank and availed loan. For the said loan, the second petitioner had also executed a continuing guarantee in favour of the complainant bank. As per the statement of accounts, the petitioners have to discharge their liability towards the debt due to the complainant bank to the tune of Rs. 1,75,96,40,269.35. In partial discharge of the said loan dues, the second petitioner issued two cheques dated 1.2.2010 for a sum of Rs. 20.00 Crores and Rs. 10.00 Crores respectively on behalf of the

first petitioner/company. The said cheques were presented for encashment on 1.2.2010 in the account of the respondent. The said cheques were dishonoured by the petitioners' bank for want of sufficient funds to honour the cheques. They were, therefore, returned to the petitioners' banker who in turn returned to the complainant on 3.2.2010 with a return memo. Therefore, the complainant issued a statutory notice on 9.2.2010 u/s 138 of the Negotiable Instruments Act, which was acknowledged by the Accused on 15.2.2010. However, the Accused did not pay the amount due under the dishonoured cheques, as demanded, neither did he send any reply. Hence, the respondent/complainant filed two complaints against both the petitioners u/s 138 of the Negotiable Instruments Act for recovery of a sum of Rs. 20.00 Crores and 10.00 Crores respectively and the same were taken cognizance of by the learned Metropolitan Magistrate in C.C.Nos. 8620 and 8621 of 2010 respectively. On summons, the Accused have appeared before the learned Magistrate.

3. While so, these petitions have been filed to quash the proceedings against both the petitioners in C.C.Nos. 8620 and 8621 of 2010. Since the parties are same, the liability is the same, and grounds are the same, both these petitions were heard together and they are disposed of by this common order.

4. The vehement contention of the learned counsel for the petitioners/accused is that since date in the cheques have not been filled up by them and only the filling up of amount and signature has been made by them and in such circumstances, the complainant is not entitled to file the complaints on the basis of the past consideration and it is a time barred one and hence he prayed that the complainants have to be quashed. The learned counsel also relied on the judgment in the case of M/s. Balaji Seafoods Exports (India) Ltd. and another Vs. Mac Industries Ltd., wherein the petitioner in pursuance of the agreement, gave an undated cheque for Rs. 35 lakhs. The learned single Judge of this Court held that as an undated cheque having been given only as security, the provision of Section 138 of the Negotiable Instruments Act are not at all attracted and hence, the complaint against the accused cannot be maintained at all and ultimately quashed the proceedings against the petitioners. The principle laid down in the said judgment is with regard to undated cheque which was issued towards the security purpose for which later on complaint cannot be filed.

5. The learned counsel appearing for the respondent/complainant contended that no doubt the cheques belong to the Accused Company and further contended that the signature and the filling up of the amount has been admitted by the accused whereas the date alone has been filled up by the respondent bank subsequently as per the agreement. Hence, he prayed that the petitions have to be dismissed.

6. From the perusal of the typed set filed by the petitioners, it is seen that two cheques were issued for Rs. 20.00 Crores and Rs. 10.00 Crores respectively. It is not in dispute that on the date of issuance of the cheques the bank has advanced loan and the balance is to the tune of Rs. 175 Crores and the liability to pay the

debt due to the bank was in force is also not in dispute. Even at the time of the sanction of the loan itself the complainant bank insisted the petitioners/accused for issuance of undated cheques. At page No. 6 of the typed set it is seen that by a letter dated 29.1.2008 addressed to the respondent bank, the petitioners themselves have specifically admitted that they delivered undated cheques drawn on HDFC Bank Limited and that they authorised the HDFC Bank to complete the said cheques and thereby unconditionally and irrevocably authorised and confirmed the authority of the Bank to fill in the date and the amount on the said cheques and to present the same for payment. Further in the said letter it has been specifically mentioned that:

We agree and acknowledge that in accordance with the provisions of Section 20 of the Negotiable Instruments Act the bank in the present case as the holder of the said cheques shall have the authority to complete the said cheques.

Further in the said letter it has been specifically mentioned that:

We agree and acknowledge that any dishonouring of the said cheques would make me/us liable including under the provisions of Section 138 of the Negotiable Instruments Act, 1881.

7. The learned counsel for the respondent/complainant bank has also relied on a judgment reported in the case of M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, wherein the Hon''ble Supreme Court has held that:

13. The learned Judge has next gone into facts and arrived at a conclusion that the cheques were issued as security and not for any debt or liability existing on the date they were issued. In so doing the learned Judge has ignored well settled law that the power of quashing criminal proceedings should be exercised very stringently and with circumspection. It is settled law that at this stage the Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. At this stage the Court could not have gone into merits and/or come to a conclusion that there was no existing debt or liability.

8. The contention of the learned Senior Counsel appearing for the petitioners/Accused is that once the cheque issued by the petitioners/Accused is undated and it has been issued only for the security purpose, even if the cheque has been returned for want of sufficient funds, the complaint u/s 138 of the Negotiable Instruments Act cannot be filed. To substantiate his contention, the learned Senior Counsel for the petitioners/Accused relied the case of M/s. Balaji Seafoods Exports (India) Ltd. and another Vs. Mac Industries Ltd., and some other judgments also in this regard.

9. On the other hand the learned Counsel appearing for the respondent would contend that even if the cheque is undated and if it is given for security purpose

even then it can be presented for encashment and if it is bounced complaint u/s 138 of the Negotiable Instruments Act can be filed and further the existing liability and other aspects has to be decided only on merits by way of trial and hence the case cannot be quashed at this stage. To substantiate his submissions, the learned Senior Counsel appearing for the respondent relied on the decision in the case of M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another,).

10. From the perusal of the records it is seen that the petitioners/accused have availed loan for more than Rs. 175 Crores and towards the discharge of their partial liability two cheques have been given by the second petitioner on behalf of the first petitioner company for Rs. 30 Crores. Further, on the date of issuance of the cheques, subsisting debt was in force and knowing fully well, the petitioners have given two cheques and at the time of issuance of the cheques they have also issued separate letter to the respondent informing them that they will honour the cheques and in the event of failure the respondent can proceed against them u/s 138 of the Negotiable Instruments Act. Even though the learned counsel appearing for the petitioners/Accused relied on the judgment reported in M/s. Balaji Seafoods Exports (India) Ltd. and another Vs. Mac Industries Ltd., the learned counsel appearing for the respondent relied on the judgment of the Apex Court reported in M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, which is binding nature of this Court under Article 141 of the Constitution. Therefore, I am of the view the judgment reported in M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, alone is more relevant to the facts and circumstances of the case and further in this case it has been emphasized that these type of technicalities need not be considered at the initial stage and it has to be left open to the trial Court to consider and decide on this aspect. Therefore, I am of the view that these petitions are not maintainable at this stage. Hence, the Criminal Original Petitions are dismissed. Consequently, M.P.Nos. 1+1 of 2010 are closed.