

(2004) 10 MAD CK 0095

In the Madras High Court

Case No : Criminal Original Petition No. 420 of 2002

Subiksha Trading Services (P) Limited

APPELLANT

Vs

Century Flour Mills Limited

RESPONDENT

Date of Decision : 19-10-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2005) 2 BC 226 : (2004) 5 CTC 348 : (2005) 4 RCR(Criminal) 17

Hon'ble Judges : S. Sardar Zackria Hussain, J

Bench : Single Bench

Advocate : Prakash Goklaney, for the Appellant; L. Rajasekar, for the Respondent

Final Decision : Dismissed

Judgement

S. Sardar Zackria Hussain, J.—The accused 1 and 2 in C.C.No.6381 of 2001 on the file of the VII Metropolitan Magistrate Court, George Town, Madras, are the petitioners. This Criminal Original Petition is filed to quash the complaint in the said case taken on file under Sections 138 and 141 of Negotiable Instruments Act.

2. It is stated in the Original Petition by the petitioners that for the supply of maida and sooji to the petitioners by the respondent/complainant as per invoice bearing No.93433 dated 17.10.2001, the cheque bearing No.426736 dated 29.10.2001 drawn on UTI Bank Ltd., was issued and the cheque when presented on 5.11.2001 was returned unpaid with the remarks "Payment stopped by the Drawer" and informed accordingly on 7.11.2001. The lawyer notice dated 9.11.2001 of the complainant was replied by the accused on 21.11.2001 denying the liability. By way of grounds, it is urged by the petitioners that no offence u/s 138 of the Negotiable Instruments Act has been made out and the cheque was not returned on the ground of "Insufficiency of Funds" and in the absence of such allegations or averments, the complaint will not lie. Though the petitioners had sufficient funds in their account, in view of dispute between the petitioners and the respondent in releasing the payment, the payment was stopped, which is

also stated in the reply notice.

3. The petition is opposed in the counter that the second accused intentionally after issue of the cheque has issued stop payment instructions to the bank without any reasons and sent the reply notice denying liability. The grounds raised by the petitioner/accused to quash the complaint is purely facts relating to the pricing of the commodities supplied to the petitioner/accused. But the accused have not disputed the liability in respect of the invoice concerned with the cheque on the basis of which the private complaint has been filed. The accused in the letter dated 3.11.2001 has not stated to stop the presentation of cheque and also has not given intimation about its intention to stop the payment of the cheque. The question of alleged pricing dispute, maintaining balance in the accounts, can be gone into during the enquiry in the criminal case.

4. Heard the learned counsel for the petitioners and the learned counsel for the respondent.

5. The learned counsel for the petitioners argued that inasmuch as the cheque was not returned on the ground of "Insufficiency of Funds" and the cheque was returned unpaid with the remarks "Payment stopped by the Drawer", the offence u/s 138 of the Negotiable Instruments Act is not attracted and it will not come within the mischief of that Section.

6. The learned counsel for the respondent company contended that the accused issued stop payment instructions to the bank without any reasons and in the reply notice, the liability is denied by the petitioner/accused. The grounds raised in the petition to quash the proceedings in C.C.No.6381 of 2001 is purely facts which can be urged only during the enquiry. The learned counsel also submitted that the accused are not disputing liability in respect of the invoice concerned with the cheque for which complaint has been filed and inasmuch as the accused have not disputed the issuance of the cheque for the debt, the offence u/s 138 of the Negotiable Instruments Act is attracted. The learned counsel also submitted that the accused has not stated in the letter dated 3.11.2001 to stop the presentation of cheque and also not given intimation about its intention to stop the payment of cheque.

7. The issuance of the cheque for Rs.43,047.70 dated 29.10.2001 towards supply of maida and sooji to the accused by the complainant has not been denied by the accused. According to the accused, offence u/s 138 of the Negotiable Instruments Act will not attract, in view of the fact that the cheque was not returned for "Insufficiency of Funds" and that there is also no specific averments as such. The learned counsel for the petitioners/accused relied on the following decisions:-

(1) M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, , in which, the Supreme Court has ruled in paragraph 18:-

"... Even when the cheque is dishonoured by reason of stop payment instructions

by virtue of Section 139 of the Negotiable Instruments Act the Court has to presume that the cheque was received by the holder for the discharge, in whole or in part, of any debt or liability. Of course this is a rebuttable presumption. The accused can thus show that the "stop payment" instructions were not issued because of insufficiency or paucity of funds. If the accused shown that in his account there was sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presentation of cheque for encashment, then offence u/s 138 would not made out. The important thing is that the burden of proving would be on the accused."

(2) Goa Plast (P) Ltd. Vs. Chico Ursula D'Souza, in which in paragraph 13, the Supreme Court ruled:-

"Ordinarily, the stop payment instructions are issued to the Bank by the account holder when there is no sufficient amount in the account. In the present case, the reason for stopping the payment, however, can be manifold. It is essential that to issue stop payment instructions, there must be funds in the accounts in the first place - on date of signing presentation of cheque, date of letter to complainant denying liability to pay sum and date on which stop payment instructions were issued to bank."

Both the above decisions are not applicable to the facts of the case. The accused did not cause notice to the complainant that the stop payment had been issued to the bank because of the dispute in the rates with regard to the supply of maida and sooji to the accused by the complainant. The liability for issuing the cheque is also not challenged. It appears the petitioners had sufficient funds in their account during relevant period.

8. In Modi Cements Ltd., - vs. - Kuchil Kumar Nandi reported in (1998)3 Supreme Court Cases 249 relied by the learned counsel for the petitioners, the Full Bench of the Apex Court in not accepting the earlier judgment of the Apex Court in M/s. Electronics Trade and Technology Development Corpn. Ltd., Secunderabad Vs. M/s. Indian Technologists and Engineers (Electronics) Pvt. Ltd. and another, and followed in K.K. Sidharthan Vs. T.P. Praveena Chandran and Another, , has stated in paragraph 16 thus:-

"The observations of the Supreme Court in Electronics Trade & Technology Development Corpn. Ltd., in para 6 to the effect "Suppose after the cheque is issued to the payee or to the holder in due course and before it is presented for encashment, notice is issued to him not to present the same for encashment and yet the payee or holder in due course presents the cheque to the bank for payment and when it is returned on instructions, Section 138 does not get attracted", does not fit in with the object and purpose of the provision which is to promote the efficacy of banking operations and to ensure credibility in transacting business through cheques. Acceptance of this proposition will make

Section 138 a dead letter, for, by giving instructions to the bank to stop payment immediately after issuing a cheque against a debt or liability the drawer can easily get rid of the penal consequences notwithstanding the fact that a deemed offence was committed. Once the cheque is issued by the drawer a presumption u/s 139 must follow and merely because the drawer issues a notice to the drawee or to the bank for stoppage of the payment it will not preclude an action u/s 138 of the Act by the drawee or the holder of a cheque in due course."

In fact, the said decision support the case of the respondent/complainant.

9. As rightly argued for the respondent, the liability in respect of the invoice concerned with the cheque has not been disputed by the petitioners and in the notice dated 3.11.2001 they generally disputed only the higher rates claimed by the complainant with regard to the supply of maidha and rava to the petitioners and in the said letter nothing is mentioned about the stopping of the presentation of the cheque and also not given an intimation about the intention to stop the payment of the cheque. The question of alleged dispute in the rates and other factors can be gone into only in the enquiry by the learned Metropolitan Magistrate. Therefore, it is clear that the petitioners are not made out the case for quashing the complaint in C.C.No.6381 of 2001 and there are no acceptable reasons. Therefore, the petition is to be dismissed.

10. In the light of the discussions made above, this Criminal Original Petition is dismissed. No costs.