

(1997) 04 MAD CK 0100

In the Madras High Court

Case No : Criminal R.C. No. 161 of 1996 and Criminal R.P. No. 161 of 1996

United Credit Corporation and Another

APPELLANT

Vs

Palaniandi Pillai

RESPONDENT

Date of Decision : 28-04-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239, 258
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1998) 2 ALD(Cri) 600 : (1997) 2 CTC 218

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : V. Ragavachari, for the Appellant; N. Sankaravadivel, for the Respondent

Final Decision : Dismissed

Judgement

1. This revision filed by the petitioners is directed against the order passed in Crl.M.P. No. 3426 of 1995 in C.C. No. 604 of 1995 on the file of Judicial Magistrate, Tiruchy rejecting the prayer made by the petitioners u/s 258 of Criminal Procedure Code to discharge them.

2. The only point that has been urged in this revision is the petitioners through the intimation, requested the bank to stop payment for the cheques issued by them on the reason that the complainant party did not handover the passbook to them and that the dishonour and that the cheques were returned only with the endorsement, payment stopped by the drawer and that therefore the Section 138 of Negotiable Instruments Act would not get attracted.

3. This submission was rightly rejected by the trial court on the basis of the Judgment in Binary System Pvt. Ltd. v. Nobel Power Pvt. Ltd., Madras, 1992 L.W (Cri.) 307 in which is won held that the question as to whether the accused did not have sufficient funds in the account at the time of presentation of the cheques has to be decided only after the trial is over.

4. Being aggrieved over this order, this revision has been filed before this Court.

5. Mr. Raghavachari, learned counsel appearing for the petitioner, on the strength of the citation reported in K.K. Sidharthan Vs. T.P. Praveena Chandran and Another, in which the Apex Court held that the stop payment would not attract Section 138 of the Act would vehemently contend that the complaint filed in the present case also would not be sustainable under law, as this is also a case of stop payment.

6. Mr. Sankaravadivel, learned counsel for the respondent is heard in this matter. This submission made by the counsel for the petitioners could not held good because, the citation referred above would not be of any use to the petitioners as the said case relates to the stop payment case, where there was sufficient balance in the account of the accused available when the cheques in question were presented and that further more the complainant was already intimated not to present the cheque. In the instant case, admittedly, as the petitioners mentioned in their reply notice dated 4.7.1995 that there was no sufficient amount in the bank, since the petitioner did not specifically deposit sufficient amount to avoid the honouring of the cheque. Therefore, the citation referred above will not be applicable to the present case.

7. On the contrary, 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, held as follows:

"Shri Nageshwara Rao, learned counsel appearing for the respondents contended that stoppage of payment due to instructions does not amount to an offence u/s 138 and that, therefore, the ingredients in Section 138 have not been satisfied. We find no force in the contention. The object of bringing Section 138 on statute appears to be to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. Despite civil remedy, No. tion 138 intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induce the payee or holder in due course to act upon it. Section 138 draws presumption that one commits the offence if he issues the cheque dishonestly. It is seen that once the cheque has been drawn and issued to the payee and the payee has presented the cheque and thereafter, if any instructions are issued to the bank for non-payment and the cheque is returned to the payee with such an endorsement, it amounts to dishonour of cheque and it comes within the meaning of Section 138."

8. In the light of the above observation, I am not able to persuade myself to hold in the instant case, that the ingredients of Section 138 of the Act are not made out. Further more, the complainant in his complaint has not averred that he was instructed by the petitioners not to present the cheques in the bank.

9. Therefore, I do not see any ground to interfere in the order of the Magistrate in the absence of any infirmity.

10. Before conclusion, I must also point out that the filing of the petitioner u/s 258 of Criminal Procedure Code would not also be maintainable, since the said Section relates to the power of the Court to stop proceedings in summons case and it does not relate to the discharge of the accused. What over it is, as I observed earlier, there is no material to show that the petitioners are liable to be discharged at this stage.

11. In the result, the revision is dismissed. Consequently, Crl.M.P.No. 679 of 1996 is dismissed.

12. The trial Court is directed that on communication of this order it would take up this case by giving preference and dispose of the same as expeditiously as possible, as this complaint relates to the transaction held in 1995.