

(1991) 08 MAD CK 0043

In the Madras High Court

Case No : Criminal Miscellaneous Petitions No's. 13967 of 1990 and 13970 of 1990

V.P. Revathi

APPELLANT

Vs

Asha Bagree

RESPONDENT

Date of Decision : 20-08-1991

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1992) 75 CompCas 372

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Advocate : K.V. Venkatapathy, for the Appellant; K.A. Panchapagesan, for the Respondent

Judgement

Pratap Singh, J.—The accused in C.C. Nos. 2489 and 2490 of 1990 on the file of the VII Metropolitan Magistrate, George Town,

Madras, has filed these petitions u/s 482, Criminal Procedure Code, praying to call for the records in the aforesaid C.C. Nos. 2489 and 2490 of

1990 and quash the same.

2. In C.C. Nos. 2489 of 1990, the respondent has filed the complaint against the petitioner. The allegations in it are briefly as follows :

The complainant is a private limited company. The accused is the proprietrix of Premier Agency, Ramnagar, Coimbatore. Her husband was the

manager of the Coimbatore branch of the petitioner-company. In November, 1988, large scale defalcation committed by one Sethuraman was

detected by the complainant. On August 23, 1989, when Mrs. Asha Bagree went to Coimbatore, the accused and her husband came for the

settlement and the accused issued 19 cheques for a total sum of Rs. 5,48,000

drawn on the Syndicate Bank in favour of the complainant-

company. The cheques dated August 30, 1989, September 25, 1989, and October 25, 1989, for Rs. 13,000, Rs. 1 lakh and Rs. 25,000,

respectively, were sent by the complainant along with three more cheques for collection. They were returned with the endorsement ""refer to

drawer"" on February 16, 1990. The complainant was informed that these cheques had been returned. On February 21, 1990, the complainant

sent a telegram to the accused calling upon her to make payment of the value of all these cheques, viz., Rs. 2,13,000 within 15 days. On the same

day, she also wrote a letter confirming the telegram. The accused did not pay the amount nor replied to the telegram or to the letter. The accused

has committed an offence punishable u/s 138, Negotiable Instruments Act. Hence the complaint.

3. In C.C. No. 2490 of 1990, the respondent has filed the private complaint against the petitioner arraying her as the accused. The allegations in it

are briefly as follows :

The complainant is a private limited company. The accused is the proprietrix of Premier Agency, Ramnagar, Coimbatore. Her husband was the

manager of the petitioner's branch at Coimbatore. In November, 1988, large scale defalcation committed by one Sethuraman was detected. On

August 23, 1989, when Mrs. Asha Bagree went to Coimbatore, the accused and her husband came for a settlement and the accused issued 19

cheques for a total sum of Rs. 5,48,000 drawn on the Syndicate Bank in favour of the complainant company. The cheques dated November 25,

1989, December 25, 1989, and January 25, 1989, for Rs. 25,000 each were sent by the complainant along with three more cheques for

collection. They were returned with an endorsement ""refer to drawer"" on February 16, 1990. The complainant was informed that these cheques

had been returned. On February 21, 1990, the complainant set a telegram to the accused calling upon her to make payment of the value of all

these cheques, viz., Rs. 2,13,000 within 15 days. On the same day, she also wrote a letter confirming the telegram. The accused did not pay the

amount nor reply to the telegram or the letter. The accused has committed an offence punishable u/s 138, Negotiable Instruments Act. Hence the

complaint.

4. Mr. K. V. Venkatapathy, learned counsel appearing for the petitioner, contended that, as per section 138(b), a demand for payment of the amount due under the dishonoured cheques by giving a notice in writing to the drawer of the cheque within 15 days of receipt of information by him from the bank regarding the return of the cheque as unpaid is a sine qua non of the offence and in these cases no notice in writing was made and only a telegram followed by a letter are alleged to have been sent and that would not satisfy the requirement of section 138(b) of the Negotiable Instruments Act. Learned counsel contended that, as per section 27 of the General Clauses Act, where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. In view of section 27 of the General Clauses Act, he would contend that ""notice in writing"" contemplated u/s 138(b) of the Negotiable Instruments Act, can be effected only by registered post. The next contention was that the telegram sent to the accused calling upon her to make the payment was in respect of the value of all the six cheques and not in respect of the three cheques concerned in each of the cases and, on that ground also, it is not a ""notice in writing"" satisfying the requirements of section 138(b) of the Negotiable Instruments Act.

5. Per contra, Mr. K. A. Panchapagesan, learned counsel for the respondent, would contend that only ""notice in writing"" is called for and the section does not oblige that the ""notice in writing"" should be sent only by registered post. He would further contend that section 27 of the General Clauses Act, 1897, does not have any application in a case where ""notice in writing"" is required u/s 138(b) of the Negotiable Instruments Act.

6. Section 138(b) of the Negotiable Instruments Act makes it obligatory that a ""notice in writing"" should be given to the drawer of the cheque within 15 days of receipt of information by the payee or holder in due course, as the case may be, from the bank regarding the return of cheque as unpaid. Very significantly, it does not say that it should be sent by registered or that it should be served by post. Only in a case where a document

is required to be sent and "served by post", section 27 of the General Clauses Act, 1897, would be applicable. That is quite clear from the very

reading of the said section 27. So section 27 of the General Clauses Act, 1897, cannot be transposed into section 138(b) of the Negotiable

Instruments Act where "service by post" is not contemplated. What is contemplated is "notice in writing". I am inclined to accept the contention put

forth by learned counsel appearing for the respondent that "notice in writing" can be sent by telegram or by letter. In either case, it is only a "notice

in writing". What is important is that the letter or telegram, as the case may be, should satisfy the requirements of section 138(b), Negotiable

Instruments Act, viz., that "notice in writing" must call upon the drawer of the cheque to pay the amount due under the dishonoured cheques. As

per the provisions of the Negotiable Instruments Act, 15 days' time is given to the drawer of the cheque for payment and, only in case of default in

that regard, can the payee or the holder in due course can file a complaint within one month thereof. I am clear in saying that "notice in writing

which is required u/s 138(b) of the Negotiable Instruments Act need not necessarily be only by registered post, and it can as well as by a telegram

or by a letter. I do not accept the contention put forth by Mr. K. V. Venkatapathy.

7. Mr. K. V. Venkatapathy further contended that, as per the allegations made in para 5 of the complaint, the telegram was set to the accused

calling upon her to make the payment of arrears of all the six cheques, viz., three cheques covered by this complaint and three other cheques and

that does not satisfy the requirements of section 138(b) of the Negotiable Instruments Act. Here again, I am clear in saying that such an

interpretation is not correct. The thing to be seen is whether the "notice in writing" which, in this case, is a telegram followed by a letter contains a

demand to make the payment due under the dishonoured cheques concerned in the complaint. It may be part of a larger claim but yet if the claim is

made with regard to the cheques covered by this complaint also, that would amount to compliance with the requirements of section 138(b) of the

Negotiable Instruments Act. Thus, here again, I do not accept the contention of learned counsel appearing for the petitioner. No other ground was

urged before me. The grounds urged do not find acceptance with me.

8. In view of the above, both theses petitions are dismissed.