

SUPREME COURT OF INDIA

M/S. Munoth Investments Ltd.

Vs.

M/S. Puttukola Properties Ltd.

Crl.A.No.819 of 2001

(S.N.Phukan and M.B.Shah JJ.)

14.08.2001

JUDGMENT

M.B.Shah, J.

1. Leave granted.
2. Despite service of notice, none appears on behalf of the respondents.
3. By impugned judgment and order dated 27.11.2000 the High Court of Madras allowed Criminal OP No.14007 of 1999 and quashed the proceedings under Section 138 of the *Negotiable Instruments Act, 1881* (hereinafter referred to as "the Act") on the ground that there was breach of mandatory provision in issuing the notice as the cheque was returned on 13th January, 1994 and complainant issued notice on 29th January, 1994, which fell outside the period of 15 days.
4. It is the contention of the learned counsel for the appellant that appellant filed criminal complaint before the Metropolitan Magistrate, Chennai, on the ground that in respect of a liability on a promissory note, a cheque was issued in favour of the complainant on 12.1.1994 for a sum of Rs.5 lakhs. When the cheque was presented in the bank, it was returned on 13.1.1994 with an endorsement "payment stopped by drawer". Hence, appellant issued notice on 29.1.1994 which was received by the respondent on 4.2.1994. It is submitted that the appellant was informed about the dishonour of cheque only on 17.1.1994 as there were Pongal holidays between 14th to 16th January, 1994. For this purpose, he has relied upon deposition of PW1 Gopal Krishnan, Company Secretary of the appellant-company, PW2 Shri Muralidharan, Manager, Bank of Baroda, who has stated that on 13.1.1994 cheque was received back by the bank with an endorsement "payment stopped by the drawer" and that debit advice was sent to the complainant on 17.1.1994 as 14th to 16th were holidays for Pongal.
5. In our view, the High Court committed material irregularity in not referring to the aforesaid evidence which was recorded by the Metropolitan Magistrate. Section 138(b) of the Act inter alia provides that the payee has to make demand for the payment of money by

giving a notice "to the drawer of the cheque within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid". So fifteen days are to be counted from the receipt of information regarding the return of the cheque as unpaid. In the present case, it is the say of the complainant that the cheque was presented for encashment on 12th; it was returned to the bank on 13th and information was given to the complainant only on 17th, as 14th, 15th and 16th were pongal holidays. The learned counsel fairly pointed out that in the complaint it has been stated that complainant had received intimation with regard to the return of the said cheque from his banker on 13.1.1994. However, he submitted that this is apparent mistake and for explaining that mistake the appellant has led the evidence before the trial court. Undisputedly, he pointed out that in the State of Tamilnadu 14th to 16th January, 1994 there were Pongal holidays and, therefore, appellant came to learn about the dishonour of his cheque on 17.1.1994.

6. It appears that the High Court has not considered the evidence of PW1 Gopal Krishnan and PW2 Muralitharan and has passed the impugned order holding that notice before filing the complaint under Section 138 of the Act was not issued within stipulated period of fifteen days. It also appears that the Court while quashing the criminal complaint on 27.11.2000, which was filed in 1994, did not call for the record of the proceedings of the trial court for its verification.

7. In this view of the matter, the appeal stands allowed and the order passed by the High Court is set aside. The trial court is directed to proceed with the matter in accordance with law.