

SUPREME COURT OF INDIA

T.K. Koya

Vs.

K. Devaraj

(Y.K. Sabharwal and D.M. Dharmadhikari JJ.)

05.12.2003

ORDER

1. Leave granted.

2. The appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 on the ground that the two cheques, one, in the sum of Rs. 2,50,000/- and the other in the sum of Rs. 5,00,000/- were returned by the bank without payment with the endorsement that the payment had been stopped by the drawer accused. The complainant further stated that he had issued a legal notice dated 2nd May, 2001 to the accused. The information about dishonour had been received by him from the bank on 24th April, 2001. Further averment made in the complaint is : that a reply notice was received from the lawyer of the accused with false allegations.

3. The complaint has been quashed by the High Court in exercise of power under Section 482 of the Code of Criminal Procedure on the ground that it was mandatory for the complainant to say in clear terms that the accused had not paid the amount nor had he given any other explanation withholding the payment on this aspect and there was no whisper in the complaint and thus Section 138 of the Negotiable Instruments Act had not been complied.

4. We are unable to sustain the impugned order of the High Court. It is contrary to the averments made in the complaint as also to what was stated by the complainant in his pre-summoning statement. It would be useful to reproduce para 7 of the complaint.

"The complainant further stated that as per the instruction of the accused he had deposited the two cheques for collection through Indian Overseas Bank, Chengalpatu branch on 18.4.2001. The complainant state that both the cheques were returned to the complainant without payment, stating that payment stopped by the drawer, and the same was informed to the complainant on 24.4.2001 by this banker. The complainant stated that for the same he had issued a legal notice to the accused regarding the same dated 2.5.2001. The complainant further stated that a reply notice from the accused lawyer Mr. A. Deva kumar Advocate, Tindivanam dated 5.5.2001 received on 10.5.2001, with false allegation."

5. In the pre-summoning evidence statement to the aforesaid effect was made by the appellant-complainant. In this view, there was no basis for the conclusion that the complainant had not complied with the provisions of Section 138 of the Negotiable Instruments Act, 1881. The exercise of power of quashing was unwarranted on the facts of the case. At this stage we are not concerned with the defence of the accused. It would, of course, be open to the accused to take such defence as may be available to him in accordance with law.

6. The impugned order is accordingly set aside. The appeal is allowed and the complaint remitted to the concerned Magistrate for its decision as per law.