

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.06.2015

CORAM

THE HON'BLE MR.JUSTICE R.S.RAMANATHAN

CRL.O.P.No.30099 of 2010

and

M.P.No.1 of 2010

C.Sathish

.. Petitioner/Accused

.. Vs ..

R.Ravikumar

.. Respondent/Complainant

Prayer:- Criminal Original Petition filed under section 482 of the Code of Criminal Procedure, praying to call for the records in C.C.No.126 of 2010 on the file of the learned Judicial Magistrate, Pappireddipatti, Dharmapuri District and quash the same.

For Petitioner : Mr.S.Subramanian

For Respondent : No Appearance

ORDER

The accused in C.C.No.126 of 2010 on the file of the learned Judicial Magistrate, Pappireddipatti, is the petitioner herein.

2. The complainant/respondent filed a complaint dated 11.06.2010 against the petitioner under Section 138 of the Negotiable Instruments Act and the petitioner has filed this petition to quash the same.

3. The learned counsel for the petitioner has submitted that there was no statutory notice as per the provision of Section 138 of Negotiable Instrument Act and on that ground alone the complaint is liable to be dismissed.

4. The learned counsel for the petitioner has further submitted that according to the complaint, the cheque was dishonoured due to insufficient fund on 01.02.2010 and thereafter, statutory notice was sent on 09.02.2010, for which, the petitioner/accused issued a reply notice on 07.04.2010. In the statutory notice dated 09.02.2010, there is an endorsement stating that "notice resent as previous notice was not received by addressee in his native". Though the notice was dated 09.02.2010, it was not sent on 09.02.2010. It was sent beyond the period of limitation as per Section 138 of the Negotiable Instruments Act and it was made it to appear that it was sent on 09.02.2010 and therefore, the petition is liable to be allowed.

09.02.2010 was received by the petitioner only on 30.03.2010 and acknowledgment card was also filed along with the petition filed in C.C.No.126 of 2010.

6. Heard the learned counsel for the petitioner. There is no representation for the respondent.

7. I am unable to accept the contention of the learned counsel for the petitioner. It is seen from the complaint as well as from the notice issued by the respondent that intimation was received from the bank on 01.02.2010 stating that the cheque has been dishonoured and the statutory notice was sent on 09.02.2010. Therefore, prima facie, notice was issued to the petitioner within a period of 15 days from the date of intimation received from bank.

8. Even assuming that the earlier notice sent by the complainant was not served on the petitioner, when the complainant has issued notice within a period of limitation, then there is a statutory compliance. Whether the notice was issued on 09.02.2010 or issued beyond the period of limitation can be ascertained only during the trial by looking into the document. But, the petitioner has not filed any material before the Court to substantiate his claim. Hence, I am unable to accept the reasons stated by the learned counsel for the petitioner.

9. In the result, the criminal original petition is dismissed. Connected miscellaneous petition is closed. However, liberty is given to the petitioner to substantiate his case during trial that though notice was dated 09.02.2010, it was sent beyond the period of limitation.

10. The learned Judicial Magistrate, Pappireddipatti, Dharmapuri District is directed to dispose of the case in C.C.No.126 of 2010 within a period of four months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.I,
Pappireddipatti,
Dharmapuri.

2.-Thro The Chief Judicial Magistrate,Dharmapuri.

1 cc to Mr. S.Subramanian, Advocate Sr.No.28646

1 cc to Mr. Selvam, Advocate Sr.No.28038

CRL.O.P.No.30099 of 2010

kji(co)pmk.30.6.2015