

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2015

CORAM

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

Cr1.O.P.No.15885 of 2009
and
M.P.No.1 of 2009

S.Malliga

...Petitioner

vs.

P.Angamuthu

...Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for records relating to the case in S.T.C.No.291 of 2009, on the file of the Judicial Magistrate No.3, Salem, Salem District and to quash the same.

For Petitioner : Mr.M.V.Karunakaran

For Respondent : Mr.S.Kaithamalai Kumaran

O R D E R

The accused in S.T.C.No.291 of 2009, on the file of Judicial Magistrate No.3, Salem, is the petitioner herein. The respondent herein filed the aforesaid case against the petitioner/accused for offence under Section 138 of Negotiable Instruments Act, 1881, (N.I. Act) and this Petition is filed to quash the said case.

2. The learned counsel appearing for the petitioner submitted that, even as per the complaint, the statutory notice was dated 16.04.2009, and it was received by the petitioner/accused on 17.04.2009, and the complaint was dated 22.04.2009. The learned counsel, therefore, submitted that, without waiting for 15 days, the complaint was filed. Therefore, no offence has been committed by the petitioner, and the complaint itself, is liable to be quashed. The learned counsel also submitted that the petitioner has raised various points in this Petition, and those points can be canvassed before the Trial Court by adducing evidence and on the ground that the complaint was premature in nature, the Petition is liable to be allowed and complaint has to be quashed.

3. I am unable to accept the contentions of the learned counsel appearing for the petitioner. Though the petitioner filed the photocopy of the complaint, which was filed before the Trial Court, the same is bereft of the vital fact, viz., the date on

which, it was filed before the Trial Court. It is represented by Mr.S.Kaithamalai Kumaran, the learned counsel appearing for the respondent that the complaint was filed only on 22.05.2009 and not on 22.04.2009, as alleged by the petitioner.

4. According to me, the date of presentation of complaint has to be proved by the petitioner/accused by production of records to the effect that the complaint was filed within the statutory period of 15 days from the date of receipt of notice. As per proviso ii to Section 138 of N.I.Act, an offence is said to have been committed only when notice was given in writing to the drawer of the cheque (petitioner in this case) within 30 days from the date of receipt of information from the Bank regarding the dishonour of the cheque and thereafter, the drawer of the cheque failed to make payment within 15 days from the date of receipt of the said notice.

5. In this case, it is submitted by the learned counsel for the respondent that the statutory notice to the petitioner was sent on 16.04.2009, and the complaint was filed only on 22.05.2009. Hence, the contention of the learned counsel for the petitioner that the complaint was filed even before the expiry of statutory period of 15 days, cannot be accepted, in the absence of any proof.

6. In the result, the Criminal Original Petition is dismissed. However, it is open to the petitioner/accused to raise all defence before the Trial Court by adducing evidence and, if the petitioner/accused is able to prove that the complaint was filed within 15 days from the date of receipt of the notice, the same shall be considered by the Trial Court and shall pass orders on merits, within being influenced by any of the observations made herein. Consequently, connected M.P. is closed.

sd

s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate No.3, Salem.

2. -do- thro Chief Judicial Magistrate, Salem.

+ 1 cc to M/s.K.Vennila, Advocate SR 25681

+ 1 cc to Mr.A.K.Kumarasamy, Advocate SR 25736

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