

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Cr1.O.P. No. 26461 of 2009
and
M.P.No.1 of 2009

S.L.Senthilkumar

... Petitioner

vs.

R.Thirumurugan

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records in C.C.No.164 of 2009 on the file of the learned Judicial Magistrate No.IV, Thirupattur and quash the same.

For Petitioner : Mr.R.Selvakumar
For Respondent : Mr.S.Gunaseelan

O R D E R

This Petition is filed to quash the complaint in C.C.No.164 of 2009 on the file of the learned Judicial Magistrate No.IV, Thirupattur.

2. It is submitted by the learned counsel for the petitioner that the respondent filed the above complaint under sections 138 and 142 of the Negotiable Instruments Act against the petitioner stating that the petitioner issued a cheque to discharge his liability and the cheque was dishonoured when it was presented for collection and the respondent received the memo from the bank on 31.7.2009. Thereafter, a statutory notice dated 14.8.2009 was issued and the notice was received by the petitioner on 22.8.2009 and the complaint was presented before the Court before the expiry of 15 days from the date of receipt of statutory notice and on 31.8.2009, sworn statement was recorded. He therefore, submitted that the complaint must have been presented either on 31.8.2009 or earlier to that date, as seen from the docket order and having regard to the fact that the notice was received by the petitioner only on 22.8.2009, the respondent ought to have waited for 15 days time to enable the petitioner to

make the payment. As the offence is said to have been committed only after the expiry of 15 days, filing of the complaint on 31.8.2009 is premature. In support of his contention, he relied upon the judgment reported in (2014) 10 Supreme Court Cases 713 in the matter of Yogendra Pratap Singh v. Savitri Pandey and another.

3. The learned counsel for the respondent submitted that though the respondent has not stated that the date on which the complaint was filed, having regard to the docket order, the complaint must have been filed either on 31.8.2009 or earlier to that date. He therefore submitted that having regard to the judgment of the Hon'ble Supreme Court referred to above, the complaint is premature.

4. As stated supra, the statutory notice was issued on 22.8.2009 and the petitioner must have been given 15 days time to make payment from the date of receipt of the statutory notice. However, before expiry of 15 days time, the complaint was filed against the petitioner. In the judgment reported in (2014) 10 Supreme Court Cases 713 supra, the Hon'ble Supreme Court held that any complaint filed before the expiry of 15 days from the date on which notice was served on the drawer/accused is not a complaint at all in the eye of law. Under Section 142 of the N.I.Act, there is a legal bar on the Court from taking cognizance of offence in such circumstances. Under section 138 of the N.I.Act, the complaint filed before the expiry of 15 days from the date of which notice was served on the drawer was not a complaint in the eye of law and no cognizance can be taken on the basis of the said complaint. In this case also, the complaint was filed before the expiry of 15 days. Therefore, there was no complaint in the eye of law for taking cognizance.

5. In the result, the petition is allowed and the case in C.C.No.164 of 2009 on the file of the learned Judicial Magistrate No.IV, Thirupattur, is quashed. The connected Miscellaneous Petition is closed.

Sd/-

Asst. Registrar

/true copy/

Sub Asst. Registrar.

asvm

WEB COPY

To

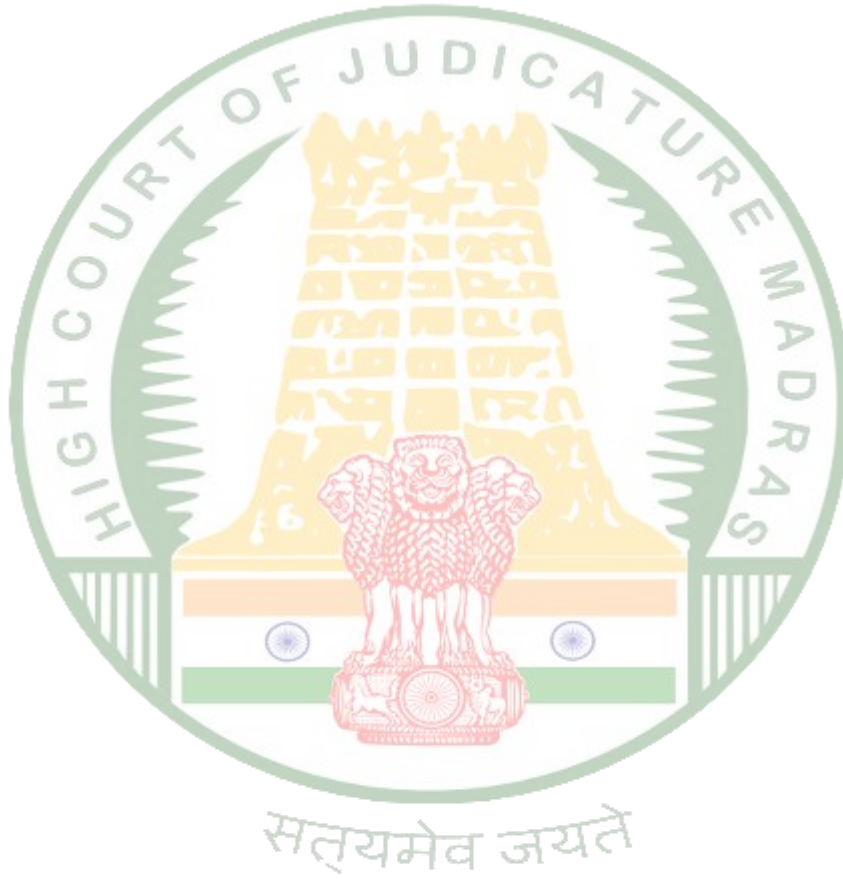
1.The Judicial Magistrate No.IV,
Thirupattur.

+1cc to Mr.R.Selvakumar, Advocate SR.No.14416

+1cc to Mr.S.Gunaseelan, Advocate SR.No.14339

CRL.O.P. No.26461 of 2009

mp[co]
gp/25.3.



WEB COPY