

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Cr1.O.P.No.29524 of 2015

K.Nallasivam

... Petitioner/Complainant

Vs

M.Tex, Represented by its Partners

1. Prabakaran

2. M.M.Vijay Mahesh

34, Sree Saraswathi Garden,

Angalaammankovil Via,

West Street, Vijayapuram,

Tirupur - 06.

... Respondent/Accused.

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to direct the Judicial Magistrate, Kangayam to receive complaint in C.C.No.266 of 2013 and decide the matter on merits in accordance with law.

For Petitioner : Mr.V.Regunathan

O R D E R

The present criminal original petition has been filed to direct the Judicial Magistrate, Kangayam to receive complaint in C.c.No.266 of 2013 and decide the matter on merits in accordance with law.

2. The petitioner herein originally filed a complaint under sections 138 and 142 of the Negotiable Instruments Act before the learned Judicial Magistrate, Kangayam. But the said complaint was returned by the learned Judicial Magistrate, Kangayam, on the point of territorial jurisdiction as per the dictum laid down in the judgement of the Honourable Supreme Court in (2014) 3 MLJ 475 (SC) [Dashrath Rupsingh Rathod Vs. State of Maharashtra and another]. Hence subsequently, the petitioner represented the complaint before the learned Judicial Magistrate No.II, Thirupur. But, by the impugned order dated 05.11.2015, Judicial Magistrate No.II, Thirupur, by citing the above said judgement of the Honourable Supreme Court, has returned the petitioner's complaint stating that the

complaint has to be represented within 30 days from the date of return, but the same was represented with 10 days delay. Hence, the petitioner has come forward with the present petition before this Court.

3. The learned counsel appearing for the petitioner submitted that so far as the present complaint is concerned, originally it was filed before the Court within the statutory period; hence, the return made by the Court below is not proper.

4. Heard the submissions and perused the materials available on record. From a perusal of the materials available on record, I find that there was a delay of ten days in representing the complaint on the part of the petitioner. However, since the original complaint was filed within the statutory period, even if there is any delay in representing the complaint, such delay can be a subject matter of trial. Hence, the decision cited by the Court below in returning the complaint represented by the petitioner cannot be a bar to receive the complaint. Therefore, I am of the opinion that the return made by the Court below is not proper.

5. Hence, the impugned order is set aside and the learned Judicial Magistrate No.II, Thirupur, is directed to take the complaint of the petitioner on file and proceed in accordance with law, as early as possible. Accordingly, the Criminal Original Petition is allowed.

vrc

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate, Kangeyam.
2. The Judicial Magistrate No.II, Thirupur.

+ 1 cc to Mr.V.Ragunathan, Advocate SR 5433

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