IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.08.2018
Pronounced on : 03.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.2170 of 2011
and
M.P.Nos.1 & 2 of 2010

Senthil Rajan. ... Petitioner/Accused

Vs.

S.Jaishankar. ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the proceedings in C.M.P.No.7229 of 2010 in un-numbered S.T.C.No..... of 2010 on the file of the Judicial Magistrate Court No.II, Pollachi and quash the same, thereby allow the present Criminal Original Petition as prayed for.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel for Ms.AL.Ganthimathi

For Respondent : Mr.D.R.Arun Kumar

O R D E R

This Criminal Original Petition is filed to call for the records relating to the proceedings in C.M.P.No.7229 of 2010 in un-numbered S.T.C.No.......of 2010 on the file of the Judicial Magistrate Court No.II, Pollachi and quash the same, thereby allow the present Criminal Original Petition as prayed for.



2.The learned counsel for the petitioner submits that the petitioner is an officer in the Income Tax Department and is working at Madurai from 07.05.2009 onwards. Between 2002 and 2007, he was working in the Office of the Income Tax Department at Pollachi and thereafter, he was transferred to Ramanathapuram before being posted to Madurai. While he was working at Pollcachi, for the purpose of his banking operations, he opened a Savings Bank Account bearing No.611201505667 with ICICI Bank Limited, Pollachi. On his transfer from Pollcachi, the petitioner for the purpose of closing the bank account contacted the Branch Manager, ICICI Bank Limited, Pollachi and as per the advice of the Branch Manager of the Bank, the ATM card and un-used, un-filled and un-signed cheque leafs were returned by the petitioner through registered post with acknowledgment due.

3.The learned counsel for the petitioner further contended that the fact being so, the petitioner received a statutory notice under Section 138 from the respondent on 30.01.2010, wherein a demand for Rs.5,00,000/- (Rupees five lakhs only) has been made, as though the petitioner borrowed the amount from the respondent and the date of the cheque has been mentioned as 18.01.2010 bearing No.567735.

4.On receipt of the notice, the petitioner had sent a detailed reply denying his liability and also informed that the petitioner had not availed any loan from the respondent and further, the petitioner had closed his Saving Bank account with ICICI Bank, Pollachi, as early as on 03.07.2008. Thereafter, the petitioner had also preferred a complaint to the District Superintendent of Police, Coimbatore on 11.02.2010 against the respondent and the Branch Manager, ICICI Bank, Pollachi and further, he had also filed a private complaint against the respondent and the Branch Manager of ICICI Bank, Pollachi before the Judicial Magistrate Court No.II, Madurai for the offences under Section 420, 465, 467, 468 and 469 of the Indian Penal Code on 05.01.2011 in Crl.M.P.No.178 of 2011.

5.The learned counsel for the petitioner further submits that the petitioner had received a notice dated 22.03.2012 from the Judicial Magistrate Court No.II, Pollachi, wherein along with the copy of the complaint and a condone delay petition in C.M.P.No.7229 of 2010, against which the petitioner had filed the quash petition.

6.The learned counsel for the petitioner further contended that the petitioner has no liability towards the respondent and taking advantage of the petitioner's position as a Senior Officer in the Income Tax Department, the Branch Manager, ICICI Bank Limited, Pollachi and the respondent are trying to exploit and extract money from him and there is no whisper of any legal recoverable debt in the complaint and further, continuation of the proceedings before the Lower Court is an abuse of process of law.

7.The learned counsel for the respondent submits that the petitioner is liable to pay the debt to the respondent and the cheque in question had been given by the petitioner in discharge of the liability towards the respondent and by following all the statutory requirements the complaint has been filed before the Lower Court.

8.The only contention is that though the complaint has been filed on 17.03.2010 within the period of limitation, as it could be seen from the complaint and from the seal of the Lower Court, the complaint was returned to the respondent to represent within a period of two weeks time. Thereafter, due to the mix-up of the case bundles in the Advocate office, the case bundle of this case was misplaced and a delay of 147 days had occurred in representing the complaint before the Trial Court. Hence, the trial Court had assigned the Crl.M.P.No.7229 of 2010 and had ordered notice to the petitioner.

9.Be that as it be, the proviso as per the Section 142 of the Negotiable Instruments Act is as follows:

> "(a) no Court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case my be, the holder in due course of the cheque;
>
> (b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:
>
> [61a][Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]"

10.It has been categorically stated that if there is any delay in filing the complaint under the Negotiable Instruments Act, if a delay is explained to the satisfaction of the Court concerned, the same may be condoned. In this case, though, the complaint was filed well within the time, the delay of 147 days has occurred in representing the complaint. Hence, the Trial Court taking the Crl.M.P.No.7229 of 2010 on the file and issuance of notice to the petitioner who is an accused in un-numbered S.T.C.No.......of 2010 cannot be construed as an abuse of process of law.

11.It is seen from the records that the case is pending even without assigning S.T.C. Number from the year 2010, due to the pendency of the above Criminal Original Petition. Under Section 143 to 146 of the Negotiable Instruments Act, it could be seen that these amendments have been made for the purpose of the speedy disposal of the cases filed under Negotiable Instruments Act.

12.Hence, the Criminal Original Petition is dismissed. Considering the inordinate delay, even at the pre-cognizant stage of the above case, this Court in the interest of justice directs the Trial Court to proceed with the case as expeditiously as possible. Registry is directed to send back the material records if any, of the above case forthwith as the case has been directed to be completed as expeditiously as possible. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.II,
Pollachi.

2. Do Thro the Chief Judicial Magistrate,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.AL.Gandhimathi, Advocate SR.No.52642
+2cc to Mr.D.R.Arunkumar, Advocate SR.No.52545 & 53757

Crl.O.P.No.2170 of 2011

KV(CO)
GN(21/08/2018)