



IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 05.09.2018
PRONOUNCED ON : 12.09.2018

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THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CrI.O.P.No.5109 of 2013
and
M.P.No.1 of 2013

R.Gokilavani

... Petitioner

Vs.

R.Palanisamy

... Respondent

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the entire records connected with, S.T.C.No.300/2012 on the file of the Fast Track Court No.II (Magistrate level), Coimbatore and quash the same.

For Petitioner : Mr.P.Saravanan

For Respondent : Mr.A.R.Suresh

O R D E R

This Criminal Original Petition has been filed by the accused to quash the proceedings in S.T.C.No.300 of 2012 on the file of the Fast Track Court No.II (Magistrate level), Coimbatore.

2. The learned counsel for the petitioner has submitted that the respondent herein has filed a private complaint under Section 138 of the Negotiable Instruments Act, stating that the petitioner herein has borrowed a sum of Rs.3,00,000/- on 17.07.2010 and with a view to discharge the said debt, she has issued a cheque for a sum of Rs.3,00,000/- dated 24.06.2011 and when the said cheque was presented for encashment, the cheque was dishonoured on 06.07.2011 with an endorsement "insufficient funds". He further stated that he has issued a statutory notice on 14.07.2011 and the same was returned as not claimed and hence he has filed a complaint to punish the petitioner herein under Section 138 of the Negotiable Instruments Act. He further submitted that the postal cover in which the statutory notice sent was returned on 22.07.2011 as "addressee not claimed". He further submitted that it has to be presumed that the said notice was deemed to be served on 22.07.2011, so, the complaint has to be filed only after 15 days from that date, but the respondent has filed the complaint before the Court on 01.08.2011 itself i.e., before expiry of 15 days and therefore,



the complaint is not maintainable. In support of the said contentions, he relied upon the decision of the Hon'ble Supreme Court in Yogendra Pratap Singh Vs. Savitri Pandey & Anr. (Criminal Appeal No.605 of 2012).

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3. The learned counsel for the respondent has submitted that the postman has served intimation to the petitioner herein on 15.07.2011 itself and hence it has to be presumed that the notice was deemed to be served on 15.07.2011 itself and if it is calculated from that date, the complaint which is filed on 01.08.2011 is certainly maintainable and therefore, he prayed to dismiss the petition.

4. In K.Bhaskaran Vs. Sankaran Vaidhyan Balan, CDJ 1999 SC 590, the Hon'ble Supreme Court has held that when a notice is returned by the sendee as unclaimed such date would be the commencing date in reckoning the period of 15 days contemplated in clause (c) to the proviso of Section 138 of the Negotiable Instruments Act. Therefore, the period of 15 days to be calculated from the date of return of the notice as unclaimed. In this case, admittedly, the statutory notice was returned as unclaimed on 22.07.2011 and from that date, if it is calculated that the 15th day would expire only on 06.08.2011, but the complaint was filed on 01.08.2011 itself. Therefore, the above complaint is a premature one.

5. In Yogendra Pratap Singh Vs. Savitri Pandey & Anr., the three Judge Bench of the Hon'ble Supreme Court in paragraph Nos.38 to 42 has observed as follows:

'38. We, therefore, do not approve the view taken by this Court in Narsingh Das Tapadia and so also the judgments of various High Courts following Narsingh Das Tapadia that if the complaint under Section 138 is filed before expiry of 15 days from the date on which notice has been served on the drawer/accused the same is premature and if on the date of taking cognizance a period of 15 days from the date of service of notice on the drawer/accused has expired, such complaint was legally maintainable and, hence, the same is overruled.

39. Rather, the view taken by this Court in Sarav Investment & Financial Consultancy wherein this Court held that service of notice in terms of Section 138 proviso (b) of the NI Act was a part of the cause of action for lodging the complaint and communication to the accused about the fact of dishonouring of the cheque and calling upon to pay the amount within 15 days was imperative in character, commends itself to us. As noticed by us earlier, no complaint can be maintained against the drawer of the cheque before the expiry of 15 days



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from the date of receipt of notice because the drawer/accused cannot be said to have committed any offence until then. We approve the decision of this Court in Sarav Investment & Financial Consultancy and also the judgments of the High Courts which have taken the view following this judgment that the complaint under Section 138 of the NI Act filed before the expiry of 15 days of service of notice could not be treated as a complaint in the eye of law and criminal proceedings initiated on such complaint are liable to be quashed.

40. Our answer to question (i) is, therefore, in the negative.

41. The other question is that if the answer to question (i) is in the negative, can the complainant be permitted to present the complaint again notwithstanding the fact that the period of one month stipulated under Section 142(b) for the filing of such a complaint has expired.

42. Section 142 of the NI Act prescribes the mode and so also the time within which a complaint for an offence under Section 138 of the NI Act can be filed. A complaint made under Section 138 by the payee or the holder in due course of the cheque has to be in writing and needs to be made within one month from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. The period of one month under Section 142(b) begins from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. However, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within the prescribed period of one month, a complaint may be taken by the Court after the prescribed period. Now, since our answer to question (i) is in the negative, we observe that the payee or the holder in due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the NI Act. This direction shall be deemed to be applicable to all such pending cases where the complaint does not proceed further in view of our answer to question (i). As we have already held that a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not



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maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the Court of sufficient cause. Question (ii) is answered accordingly.''

6. In view of the aforesaid decision of the Hon'ble Supreme Court, the complaint filed by the respondent is not maintainable and therefore, this petition has to be allowed with a liberty to file a fresh complaint within one month from the date of this order and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the Negotiable Instruments Act.

7. In the result, this petition is allowed. Consequently, the connected miscellaneous petition is closed. The proceedings in S.T.C.No.300 of 2012, on the file of the Fast Track Court No.II (Magistrate Level), Coimbatore are quashed with liberty to file a fresh complaint within one month from this date and if any such complaint is filed, the delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the Negotiable Instruments Act.

For being Mentioned

The matter having been posted on 27.11.2018 under the caption for being mentioned, in pursuance of the order dated 12.09.2018 and made herein and in the presence of Mr.P.Saravanan, Advocate for the petitioner and of Mr.A.R.Suresh, Advocate for the respondent, the court made the following order:

When the matter came up for hearing today i.e., on 27.11.2018 under the caption, "for being mentioned", the learned counsel for the respondent submitted that this Court, by the order dated 21.09.2018, while allowing the petition, has granted liberty to the respondent for filing a fresh complaint within a period of one month from the date of the order. He further submitted that he has immediately filed a copy application i.e., on 12.09.2018 itself, but the copy was made ready only on 08.11.2018 and hence the respondent could not file complaint within the time stipulated by the order of this Court dated 12.09.2018.



2.Considering the aforesaid submissions, two weeks time is granted for filing fresh complaint, if any, from the date of receipt of a copy of this order.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsp/vv

To

1.The Fast Track Court No.II (Magistrate level),
Coimbatore .

2.The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.A.R.Suresh, Advocate, S.R.No.81903

Cr1.O.P.No.5109 of 2013
and
M.P.No.1 of 2013

GP(CO)

rrs 11/12/2018