



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.09.2018
CORAM
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL.O.P.(MD)No.8953 of 2016
and
Crl.M.P.(MD)No.4414 of 2016

C.Gayathri

... Petitioner

Vs

C.Anitha

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to call for the records relating to C.C.No.122 of 2016 pending on the file of the learned Judicial Magistrate No.I, Thoothukudi and to quash the said proceedings as against the petitioner herein.

For Petitioner : Mr.S.Dheenadhayalan
For Respondent : Mr.V.Malaiyendran

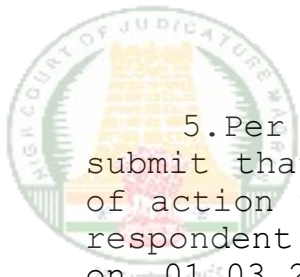
O R D E R

This petition has been filed to quash the private complaint in C.C.No.122 of 2016 pending on the file of the Judicial Magistrate No.1, Thoothukudi.

2.The respondent has filed a complaint against the petitioner for an offence under Section 138 of the Negotiable Instrument's Act.

3.The learned counsel for the petitioner would submit that after dishonor of the cheque, the respondent issued a notice dated 9.02.2016 to the petitioner and after the receipt of the said notice, the petitioner has also issued a reply notice dated 01.03.2016. However, the respondent has issued another notice dated 01.04.2016 with the very same allegation and has called upon the petitioner to pay the amount within a period of 15 days from the date of receipt of the notice. Thereafter, the complaint was filed on 04.04.2016.

4.The learned counsel for the petitioner would submit that this complaint is hit by Section 138 (c) of the Negotiable Instrument's Act, since the subsequent complaint has been filed within a period of three days after the issuance of the subsequent notice, dated 01.04.2016. The learned counsel for the petitioner would further submit that the subsequent notice cannot be called as a rejoinder and it is in the nature of a fresh notice, since the respondent has called upon the petitioner to pay the amount within a period of 15 days.



5.Per contra, the learned counsel for the respondent would submit that the entire complaint has been filed based on the cause of action that arose pursuant to the statutory notice issued by the respondent on 9.02.2016 and the reply notice given by the petitioner on 01.03.2016. The learned counsel for the respondent would further submit that the nature of the notice dated 01.04.2016 is only a rejoinder and not a fresh notice.

6.This Court has carefully considered the submission made on either side. A reading of the complaint would suggest that the respondent has developed the cause of action only based on the legal notice, dated 9.02.2016 and the reply given to it by the petitioner on 01.03.2016. If the said notice is taken into consideration, the complaint filed on 04.04.2016 does not suffer from any illegality and it is a well within the time stipulated under Section 138 of the Negotiable Instrument's Act. The submissions made with regard to the effect of the subsequent notice dated 01.04.2016, cannot be a subject matter of discussion in this quash petition. The same has to be agitated only before the Court below in the course of trial.

7.The other contentions made by the learned counsel for the petitioner questioning the very liability itself, are also matters to be agitated only before the Court below.

8.This Court does not find any ground to quash the complaint pending in C.C.No.122 of 2016. It is open to the petitioner to raise all the grounds before the Court below, which will consider the same on its own merits in accordance with law. The C.C.No.122 of 2016 is of the year 2016. Therefore, there will be a direction to the learned Judicial Magistrate No.I, Thoothukudi to complete the proceedings within a period of three months from the date of receipt of a copy of this order and report the compliance before this Court after the completion of the proceedings.

9.At this stage, the learned counsel for the petitioner submitted that the presence of the petitioner before the trial Court may be dispensed with.

10.Accepting the submission, the presence of the petitioner before the trial Court shall be dispensed with on condition that the petitioner shall be present at the time of questioning under Section 313 of Cr.P.C and at the time of passing judgment. The petitioner is permitted to be represented by his counsel and the counsel representing the petitioner shall cross examine the witnesses on the very same day, they are examined in chief.

11.With the above directions, this criminal original petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-III)



To
The Judicial Magistrate No.I, Thoothukudi.

+1cc to Mr.R.Vijayakumar, Advocate, SR.No.84860
+1cc to Mr.V.Malaiyendran, Advocate, SR.No.84583

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