



WEB COPY

1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

Crl. OP (MD)No.18057 of 2013
and
MP(MD)No.1 of 2013

A.M.Raficq

... Petitioner

Vs.

A.Jalaludeen

... Respondent

PRAYER : This Criminal Original Petition is filed Under Section 482 of Criminal Procedure Code to call for the records pertaining to C.C No.213 of 2013 on the file of the Judicial Magistrate, No.II, Dindigul and quash the same.

For Petitioners : Mr.D.Sadiq Raja

For Respondent : No appearance

ORDER

The petitioner is an accused in a case under Section 138 of the Negotiable Instruments Act. The cheque issued by him bounced on 09.07.2012. In this regard statutory notice was issued on 26.07.2012. The petitioner did not offer any reply. The complainant filed a complaint before the Judicial Magistrate at Coimbatore on 24.08.2012.

2.It is not in dispute that the presentation of the complaint under Section 138 of the Negotiable Instruments Act was within time. Since the said Court in which the complaint was originally presented did not have the jurisdiction, it returned the same for presenting before the proper court. Thereafter, the complaint was presented before the learned Judicial Magistrate No.II, Dindigul which was the appropriate Court. The learned Judicial Magistrate No.II, Dindigul again returned the complaint stating that the delay excuse petition has to be filed. Thereafter, it appears that the complaint was taken on file and summons were issued.

3.The learned counsel appearing for the accused seeks to quash the complaint by placing reliance on the decision of this Court



reported in 2008 (1) CTC 503 (Nataraj @ Natarajan Vs. P.Venkatachalam), where this Court held that where there is a delay in presenting the complaint, the complainant should file an application for condoning the delay and on such filing the said application, the accused should be given an opportunity of hearing. The said decision is not applicable to the facts of this case.

4. In the present case, it is not in dispute that the complaint was filed within time. The delay was in respect of re-presenting the complaint. Matters relating to resubmission of applications are between the applicant and the Court. In this case, the complaint was filed within time. That apart, by taking the complaint on file and issuing summons on the accused, the delay occasioned in representing is deemed to have been condoned. Therefore, this Court does not find any merit in this contention. The same stands dismissed.

5. At this stage, the learned counsel appearing for the petitioner submitted that the relief of dispensing with the appearance of the petitioner can be given. This Court directs that the trial magistrate shall insist on the appearance of the petitioner herein only for answering the charges and at the time of examination of witnesses under Section 313 of Cr.PC and at the time of pronouncing judgement. Except the aforesaid occasions, on other hearing dates the petitioner can be permitted to be represented through counsel.

6. With this relief regarding dispensing with the personal appearance of the petitioner, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also dismissed.

X

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No. II,
Dindigul

+1CC to Mr. D. Sadiq Raja, Advocate, SR.No.62919.

Cr1. OP (MD) No.18057 of 2013
and
MP (MD) No.1 of 2013
19.04.2018



WEB COPY