



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.01.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P. (MD) No.4019 of 2013

and

M.P. (MD) Nos.1 and 2 of 2013

Rajeswari ... Petitioners/Sole Accused

Vs.

Krishnajayanthi ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for records relating to C.C.No.321 of 2011, pending on the file of the Judicial Magistrate No.III, Dindigul and to quash the said proceedings.

For Petitioner : Mr.M.Karthikeya Venkitachalapathy

For Respondent : Mr.C.Vakeeswaran

O R D E R

This Criminal Original Petition has been filed to quash C.C.No.321 of 2011, pending on the file of the Judicial Magistrate No.III, Dindigul.

2.The petitioner herein is the sole accused in C.C.No.321 of 2011 pending on the file of the learned Judicial Magistrate No.III, Dindigul. This application is filed to quash the proceedings initiated against this petitioner. Actually the respondent/complainant lodged a complaint before the Judicial Magistrate No.III, Dindigul, against this petitioner for the offence under Section 138 of Negotiable Instruments Act.

3.In order to substantiate the claim made by the petitioner, the counsel appearing for the petitioner submitted that the respondent has filed the complaint without following the procedure laid down in the Section 138 of Negotiable Instruments Act. Further he contended that as per the records submitted by the respondent, the disputed cheque was dishonoured and intimated to the petitioner on 23.12.2010. Thereafter, the statutory notice was issued only on 11.02.2011, after completion of 48 days beyond the period stipulated in the Act. Hence, it is useful to extract



the Section 138 of Negotiable Instruments Act and it reads as follows:

"138.Dishonour of cheque for insufficiency, etc., of funds in the account.- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of he said amount of money by giving a notice in writing to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice."

So, according to the provision contemplated under the act, the statutory notice has been issued within a period of 30 days from the date of return of the cheque. But, in this case the respondent/complainant has not followed the procedure laid down in the provision and sent the notice on 11.02.2011 after the completion of statutory period. So taking cognizance by the Magistrate, itself is nothing, but against the provisions of Section 138 of Negotiable Instruments Act. Accordingly, the prayer sought for by the petitioner is reasonable one. Hence the proceedings initiated in C.C.No.321 of 2011, on the file of the Judicial Magistrate No.III, Dindigul, is liable to be quashed.

<https://hcservices.ecourts.gov.in/hcservices/>

4.In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.321 of 2011 pending on the file of



the Judicial Magistrate No.III, Dindigul, is quashed.
Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.III, Dindigul.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2COPIES)

+ 1 cc TO Mr.M.Karthikeya Venkitachalapathy , Advocate in SR No.
42898

TM/rmi

AE/KK/SAR3/02.02.2018/3P/6C

**Cr1.O.P.(MD)No.4019 of 2013 and
M.P.(MD)Nos.1 and 2 of 2013
18.01.2018**