

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

Crl.O.P.No.19583 of 2019

and

Crl.M.P.Nos.10027 & 10028 of 2019

1.General Automation Private Limited,
2/123 A, 1st Floor, Painummoottil Building,
NH 49 Vadayampady P.O., Kerala 682308
Puthencruz, Via, Choondy, Ernakulam.

2.General Automation Private Limited,
2/123 A, 1st Floor, Painummoottil Building,
NH 49 Vadayampady P.O.,
Puthencruz, Via, Choondy, Ernakulam.
Kerala 682308
Rep by its Managing Director,
Sijimon P.Abraham

...Petitioners

Vs

M/s.Advaith Consultancy
Rep by N.Parameswaran
39-M, Kalipalayam, Mulanur,
Dharapuram Taluk,
Thiruppur District 638 106

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in STC No.353 of 2019 on the file of the Judicial Magistrate Court, Dharapuram and quash the same.

For Petitioners: Mr.Sheji P.Abraham

For Respondent : Mr.G.Sugadev Rajaguru

O R D E R

This Criminal Original Petition is filed to call for the records in STC No.353 of 2019 on the file of the Judicial Magistrate Court, Dharapuram and quash the same.

2. The petitioner herein has been arrayed as accused in the complaint for offence under Section 138 of the Negotiable

Instruments Act. The main ground on which, the present quash petition has been filed, is that the respondent / complainant sent a notice of dishonour dated 24.01.2019 and the same was received by the petitioner on 28.01.2019. Thereafter, she had given a reply to the notice on 11.02.2019 which has been received on 13.02.2019. The complaint ought to have been filed 30 days therefrom, which expires on 14.03.2019. However, the complaint has been filed by the respondent on 20.03.2019 which is apparently beyond the period of 30 days prescribed under Section 142 (i) (b) of the Negotiable Instruments Act.

3. It is not in dispute that the respondent herein had failed to file any application seeking to condone the delay. While that being so, the complaint itself cannot be sustained in view of the violation of Section 142 (i) (b) of the Negotiable Instruments Act, which is not curable defect. This Court, in the case of M/s.Career & Career Education Services Private Limited and another Vs. Ganadipathy Tulsi's Jain Engineering College, rep by its Chief Administrative Officer, A.Elango reported in CDJ 2019 MHC 796, had a occasion to hold that such belated presentation of the complaint cannot be sustained. The relevant portion of the order reads as follows:

"12.Thought the submission made by the learned counsel for the respondent is that the defect of belated filing of complaint is curable one, she did not substantiate her submission with any material. Therefore, this Court is of the considered opinion that though there is a proviso under Section 142(b) of Negotiable Instruments Act, belated filing of complaint without any condone delay petition is not a curable defect. The complaint can be filed belatedly provided that if the complainant satisfies the Court with sufficient cause for not filing the complaint within such period by condone delay petition. The case on hand, the respondent did not file any condone delay petition and the trial Court also without calculating the days have taken cognizance. Therefore, the complaint is barred by limitation and the trial Court ought not to have taken cognizance.

13.In view of the above, this Criminal Original Petition stands allowed and the proceedings in S.T.C.No.122 of 2017, on the file of the learned Judicial Magistrate/ Fast Track Court, Vellore is hereby quashed. Consequently, connected Miscellaneous Petitions are closed."

4. In the light of the above observations, this Court is inclined to hold that the petitioner is entitled to succeed. Accordingly, the proceedings in STC No.353 of 2019 on the file of the Judicial Magistrate Court, Dharapuram, stands quashed. The Criminal Original Petition stands allowed. The rejection of the complaint will not be a bar to the petitioner to approach the Civil Court seeking for recovery, if any, subject to the law of limitation. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate Court,
Dharapuram.

+1cc to Mr.B.Manoharan , Advocate SR.No. 96283

+1cc to Mr. G.Sugadev Rajaguru, Advocate SR.No. 96099

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A.SK(06/12/2019)