

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.15088 of 2017

and

Crl.M.P.Nos.9526 & 9527 of 2017

High Land Constructions,
Rep. by its Managing Director,
Eljo Thomas

... Petitioner

Vs.

V.N.Kesavaraj

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to C.C.No.244 of 2017 pending before the Fast Track Magistrate No.I, Coimbatore and quash the said complaint.

For Petitioner : Mr.J.Franklin

For Respondent : Mr.V.N.Kesavaraj

O R D E R

This petition has been filed to quash the proceedings in C.C.No.244 of 2017 on the file of Fast Track Magistrate No.I, Coimbatore.

2.The learned counsel for the petitioner submitted that the petitioner is the sole accused in C.C.No.244 of 2017, which has been initiated by the respondent for the offence punishable under Section 138 of The Negotiable Instruments Act. The learned counsel raised only one ground that the complaint has been filed belatedly without any condone delay petition and after statutory period as prescribed under 138 of Negotiable Instruments Act. The learned Magistrate without even considering the said fact, mechanically taken cognizance and issued summons to the petitioner.

3.It is seen that the cheque dated 02.04.2016, was presented for collection on 02.04.2016. The said cheque was returned dishonored on 04.04.2016 for the reason "Funds Insufficient". The respondent issued statutory notice on 02.05.2016 and the

same was duly received by the petitioner on 04.04.2016. The time for settling the amount was given by the respondent as 15 days and the said period was completed on 19.05.2016. Thereafter, the cause of action arose to file a complaint from 20.05.2016 to 18.06.2016. Therefore, the respondent ought to have filed a complaint within a period of 30 days from the date of cause of action. Admittedly, 30 days period over on 18.06.2016. Whereas the complaint lodged only on 24.06.2016.

4.It is relevant to extract the following portion of Section 138 of The Negotiable Instruments Act :-

"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 the 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."

5.Therefore, the present impugned complaint was presented only on 24.06.2016 and it is beyond a period of 30 days. It is

also seen from the records that no condone delay petition was filed by the respondent as contemplated under The Negotiable Instruments Act. Therefore, the complaint is not maintainable and it is liable to be quashed.

6. Accordingly, the criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

AT

To

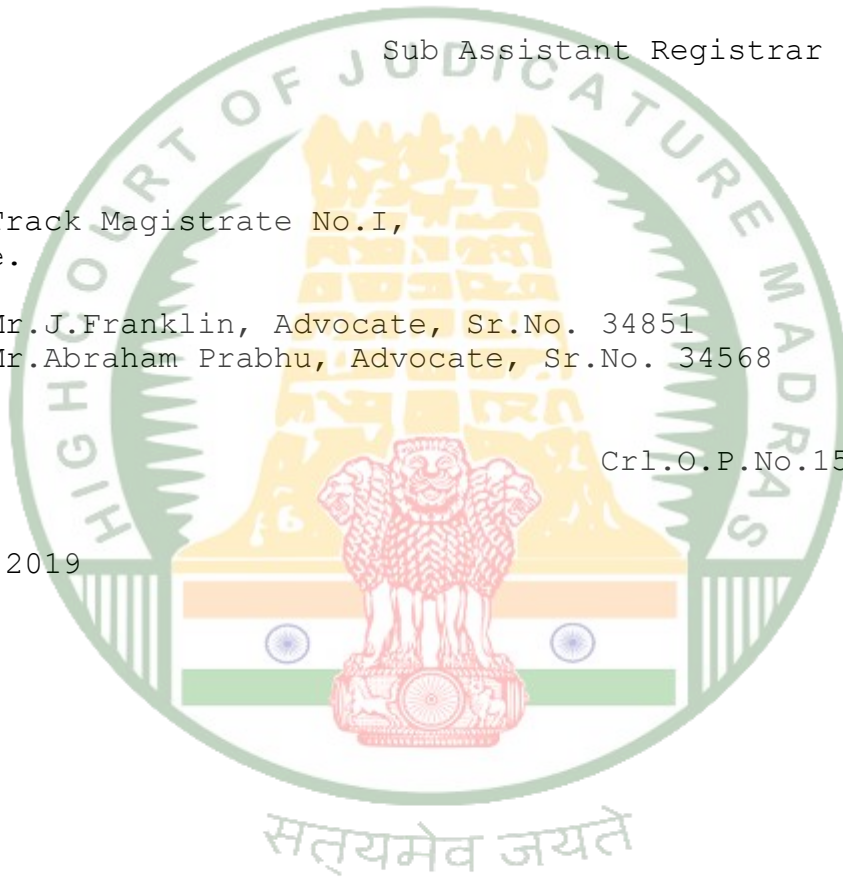
The Fast Track Magistrate No.I,
Coimbatore.

+1 cc to Mr.J.Franklin, Advocate, Sr.No. 34851

+1 cc to Mr.Abraham Prabhu, Advocate, Sr.No. 34568

Crl.O.P.No.15088 of 2017

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