

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

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THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Cr1.O.P.No.2451 of 2020

G.Abirami

...Petitioner

-Vs-

Kalpana Sreeramulu

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order dated 31.12.2019 passed by the Learned Judicial Magistrate, Arni, Thiruvannamalai District and further direct the Judicial Magistrate to accept the complaint under section 138 of the Negotiable Instruments Act filed by the petitioner and inquire and try the offence within a specific time frame.

For Petitioner : Mr.S.Ambalavanan

ORDER

This petition has been filed to set aside the order passed by the Judicial Magistrate, Arani, Thiruvannamalai District in C.C.S.R.No.2466 of 2019 dated 31.12.2019.

2. The learned counsel for the petitioner has submitted that the respondent borrowed a sum of Rs.8 lakhs from the petitioner and to discharge the said debt, she issued four cheques each of Rs.2 lakhs. He further submitted that the petitioner has presented the said cheques before the State Bank of India, Ambattur, Industrial Estate Branch, Chennai on 20.08.2019. But, the cheques were returned as "payment stopped by the drawer". He further submitted that again the petitioner has presented the cheques at the request of the respondent, on 10.10.2019 before the same Bank and at that time also, the cheques were returned and thereafter, the petitioner has issued statutory notice. He further submitted that since the petitioner is having permanent residence at No.46, Pillaiyar Koil Street, Vilai Nesal Post, Nesal, Arani Taluk, Thiruvannamalai District and she is having account with State of Bank of India, Arani Branch, the petitioner filed a complaint before the Judicial Magistrate, Arani, but, the learned Judicial Magistrate, Arani has returned the said complaint by the order dated 31.12.2019 stating that since the collection Bank is at Ambattur, the complaint is returned for

filing before the jurisdictional Court. He further submitted that as per Section 142 of the Negotiable Instruments Act, since the petitioner is having Bank account at Arani also, it has to be presumed that the said cheque was presented before the said Bank. Hence, he prayed that the order passed by the Judicial Magistrate, Arani may be set aside and to direct the said Magistrate to entertain the said complaint and dispose of the same in accordance with law.

3. Section 142 (2) of the Negotiable Instruments Act reads as follows:

"142. Cognizance of offences. —[(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)–

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]

(c) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.]

[(2)] The offence under section 138 shall be inquired into and tried only by a Court within whose local jurisdiction,–

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation:– For the purpose of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.]”

4.From the reading of the aforesaid provisions, it is clear that the offence under section 138 of the Negotiable Instruments Act shall be inquired into and tried only by a Court within whose local jurisdiction if the cheque was presented for collection through an account, the branch of the bank where the payee or holder in due course, maintains the account is situated or if the cheque is presented for collection in other's account, the branch of the drawee bank where the drawer maintains the account is situated.

5. Admittedly, in this case, the petitioner has presented the cheques only before the State Bank of India, Ambattur Industrial Estate Branch, Chennai and in such a case, the Judicial Magistrate at Ambattur alone will have the jurisdiction. But, strangely the petitioner has presented the complaint before the Judicial Magistrate, Arni by saying that she is having account at State Bank of India, Arni Branch also. Merely because, she is having account at State Bank of India, Arni branch, that will not give jurisdiction for filing complaint before the Judicial Magistrate, Arni, because the cheques were neither presented before the said branch, nor returned by the said branch.

6. Therefore, this Court of the view that the learned Judicial Magistrate, Arni has rightly returned the complaint. Accordingly, this Criminal Original Petition is dismissed. For presenting the said complaint before the Judicial Magistrate, Ambattur fifteen days time is granted from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Arni, Thiruvannamalai District.

2.-Do-Thro The Chief Judicial Magistrate,
Thiruvannamalai District.

3.The Judicial Magistrate,
Ambattur.

+1cc to Mr.B.S.Ramesh, Advocate SR.9922

Cr1.O.P.No.2451 of 2020

SV(CO)
CB(11/02/2020)