

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.3712 of 2020
and
Crl.M.P.Nos.2145 & 2147 of 2020

Balachander, M/57 years,
S/o. Ponnusamy,
Door No.7/403, Govindasamy Nagar,
Harur Post & Taluk,
Dharmapuri District. Petitioner

Vs.

Viswanathan, M/70 Years,
S/o. Munusamy Gounder,
7/189, Govindasamy Nagar,
Harur Post & Taluk,
Dharmapuri District. Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in S.T.C.No.1607 of 2019 on the file of the learned Judicial Magistrate, Harur and quash the same.

For Petitioner : No appearance

For Respondent : Mr.J.Pradeep

ORDER

his petition has been filed for seeking to quash the proceedings in S.T.C.No.1607 of 2019 on the file of the learned Judicial Magistrate, Harur.

2.The learned counsel appearing for the respondent would submit that the petitioner is in custody for the offence punishable under Section 138 of Negotiable Instrument Act. According to the respondent, he extended the loan to the petitioner who is the close relative working in BASN Office, for his domestic expenses and in order to repay the said amount, the petitioner issued a cheque for Rs.7,60,000/-. The said cheque was presented for collection and the same was returned, for the reason 'Funds Insufficient' vide return

memo dated 28.08.2019. Hence, the respondent has issued a statutory notice dated 04.09.2019 and the same was returned on 10.09.2019 with an endorsement 'unclaimed'. Thereafter, the respondent filed a petition dated 11.11.2019 before the learned Judicial Magistrate, Harur to condone the delay of 16 days. The learned Magistrate, without disposing the petition filed for condonation of delay, straightaway recorded the sworn statement of the respondent on 26.11.2012 and had taken cognizance in S.T.C. No.1607 of 2019 on 14.12.2019 and ordered the summons to the petitioner herein. Therefore, the complaint itself is not maintainable and it is liable to be quashed. Further, The learned counsel for the respondent would submit that, while filing the complaint for the offence punishable under Section 138 of Negotiable Instrument Act, there was a delay of 16 days and as such, the respondent filed the petition under Section 142 of Negotiable Instrument Act to condone the delay of 16 days in filing the complaint under Section 138 of Negotiable Instrument Act. The learned Magistrate, inadvertently without passing any order in the condone delay petition, recorded the sworn statement of the respondent herein on 26.11.2019 and taken cognizance in S.T.C.No.1607 of 2019. He would further submit that his defect is curable in nature and as such, requested this Court to remand back the matter for consideration of the condone delay petition.

3.Head Mr.J.Pradeep learned counsel appearing for the respondent.

4.The petitioner is an accused in the complaint lodged by the respondent herein for the offence Punishable Under Section 138 of Negotiable Instrument Act. The petitioner borrowed a sum of Rs.7,60,000/- and in order to repay the cheque was issued and when the same was presented for collection, the same was returned with an endorsement 'Funds Insufficient'. After issuing the statutory notice as contemplated under Section 138 of Negotiable Instrument Act, the respondent lodged a complaint. While lodging the complaint there was a delay of 16 days in filing the complaint. Therefore, the respondent filed a petition under Section 142 of Negotiable Instrument Act for condone delay to condone the delay of 16 days in filing the complaint. The learned Magistrate, Harur, without passing any order in the application filed under Section 142 of Negotiable Instrument Act, straightaway recorded the same statement and taken cognizance in S.T.C.No.1607 of 2019 for the offence under Section 138 Negotiable Instrument Act.

5. On perusal of records, admittedly no order has been passed in condone delay petition. The learned Magistrate mechanically recorded the sworn statement and had taken cognizance. However, this defect is curable in nature and as

such, the complaint cannot be quashed. Therefore, it would be appropriate that the order of cognizance taken by the trial Court is set aside and the entire matter is remanded back to the trial Court for consideration of condone delay petition. The trial Court is directed to issue notice to the petitioner on the condone delay petition filed by the respondent and dispose the same, on merits and in accordance with law. After passing the order in the condone delay petition, the trial Court shall proceed further in the complaint lodged by the respondent herein.

6. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsn

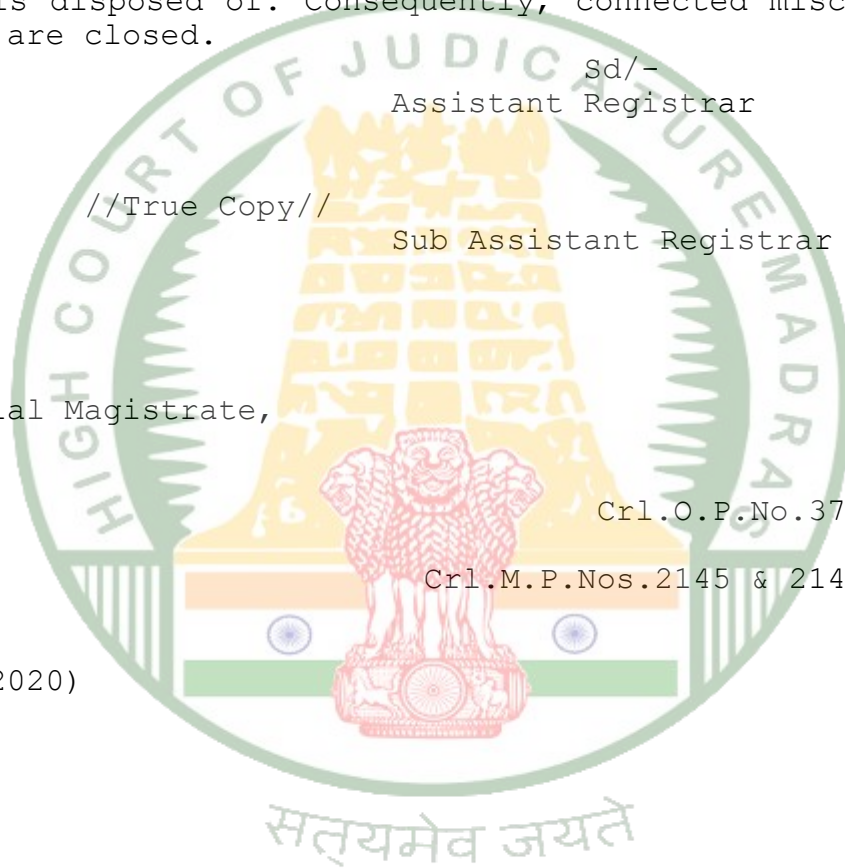
To

The Judicial Magistrate,
Harur.

Crl.O.P.No.3712 of 2020
and

Crl.M.P.Nos.2145 & 2147 of 2020

CB(CO)
CB(16/10/2020)



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