

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.6927 of 2020 and

Crl.MP.No.3771 of 2020

K.S.Dakshminamoorthy ... Petitioner/Accused

Vs.

B.Radhakrishnan ... Respondent/Complainant

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records on the file of the Fast Track Magistrate No.II, Coimbatore in CC.No.1538 of 2019 and quash the same.

For Petitioner : Mr.Sarath Chandran
for Mr.V.Raghavachari

For Respondent : Mr.S.Rajendrakumar

O R D E R

This petition has been filed to quash the proceedings in CC.No.1538 of 2019 on the file of the Fast Track Magistrate Court-II, Coimbatore.

2. The learned counsel for the petitioner would submit that the petitioner is the sole accused on the complaint lodged by the respondent herein for the offence punishable under Section 138 of Negotiable Instruments Act. The alleged cheque was issued on 02.05.2019 and it is valid for three months. Even according to the defacto complainant, the cheque was issued on 02.05.2019 and requested to present the same on 17.06.2019. On 17.06.2019, the cheque was presented and the same was returned dishonoured on 18.06.2019 for the reason "stop payment" issued by the petitioner herein. When the respondent asked about the same, again the petitioner herein instructed to re-present the cheque on 17.08.2019. Again the said cheque was presented for collection on 17.08.2019. Again it was returned dishonoured for the very same reason on 17.08.2019. Thereafter it was again re-presented for collection on 14.10.2019 as requested by the petitioner herein, which was also returned on the same ground of "payment stopped by the drawer" on 15.10.2019. Admittedly, the cheque was dated 02.05.2019 and finally presented for

collection on 15.10.2019, namely after period of five months. The instrument is valid only upto three months from the date of issuance of cheque. Therefore, the complaint itself is not maintainable and is liable to be quashed.

3. The learned counsel for the respondent would submit that only on the request of the petitioner, the cheque was presented on the third time on 17.08.2019. Again it was returned dishonoured for the reason "payment stopped by the drawer". Therefore, the petitioner committed offence punishable under Section 138 of NI Act. Further, these grounds cannot be considered before this court and it has to be considered before the trial court during the trial by let in evidence. Therefore, he sought for dismissal of the quash petition.

4. Heard Mr.Sarath Chandran, the learned counsel for the petitioner and Mr.S.Rajendrakumar, the learned counsel for the respondent.

5. The petitioner is the sole accused on the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act. The respondent lodged complaint alleging that the petitioner borrowed a sum of Rs.7,50,000/- from the respondent to put up additional construction in his property at Chennai since his son-in-law and daughter are very close to the respondent herein. The petitioner also assured that he will return the amount within a period of one month. Thereafter, the petitioner did not make the payment as assured by him. After repeated request, he issued cheque dated 02.05.2019 for a sum of Rs.7,50,000/- and also assured that it will be honoured on presentation. On instruction, the said cheque was presented for collection on 17.06.2019 and the same was returned dishonoured for the reason "payment stopped by the drawer". Immediately it was informed to the petitioner and again the petitioner requested the respondent to re-present the cheque for collection. Therefore, on the request of the petitioner, the cheque was presented for collection on 17.08.2019 and the same was also returned dishonoured for the very same reason. Once again on the request of the petitioner, the said cheque was presented for collection on 14.10.2019. Again the said cheque was returned dishonored for the very same reason, namely "payment stopped by the drawer". Thereafter, the respondent issued statutory notice dated 17.10.2019 and filed the impugned complaint.

6. Admittedly, the alleged cheque was issued by the petitioner on 02.05.2019. The cheque is valid for three months and its validity expired on 01.08.2019. Originally, the cheque is valid for a period of six months. Subsequently, vide notification No.RBI/2011-12/251, DBOA.AML BC No.47/14.01.00/2011-12 dated 4.11.2011 the period has been reduced from six months to three months, which is effected from 01.04.2012. Therefore, the alleged cheque had become

invalid after 01.08.2019.

7. As discussed above, admittedly, the cheque was presented for collection finally on 14.10.2019, namely beyond the period of three months from the date of the cheque. Therefore, the alleged cheque has become invalid after 01.08.2019 and as such no cause of action arose to lodge complaint as against the petitioner and the entire proceedings are nothing but clear abuse of process of law and it cannot be sustained as against the petitioner. Accordingly, this Criminal Original Petition is allowed and the entire proceeding in CC.No.1538 of 2019 on the file of the Fast Track Magistrate Court-II, Coimbatore is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The learned Fast Track Magistrate No.II,
Coimbatore

2.The Public Prosecutor,
High Court of Madras.

+1cc to Mr.V.Raghavachari Advocate SR.NO.32381

CA CO

SDR 15/12/2020

CRL.O.P.No.6927 of 2020

सत्यमेव जयते

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