

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.20608 of 2014 and
CrI.M.P.No.1 of 2014

M/s.Sakthi Motors,
Rep. by,
N.Vasudevan,
Proprietor,
S/o.Natarajan,
Flat No.1, M.T.H.Road,
Thirumullaivoil,
Chennai.

... Petitioner

Vs.

P.Natarajan,
S/o.Pungalingam,
Rep. by Power Agent,
Mr.P.Damodharan,
S/o.Pungalingam,
Door No.46, Jayalakshmi Nagar,
Thondamuthur Main Road,
Bharathiar University (P.O.).,
Coimbatore - 46.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the proceedings in C.C.No.519 of 2013 on the file of the learned Judicial Magistrate VI at Coimbatore and quash the same.

For Petitioner : Mr.S.Mohanavadivelan

For Respondent : Mr.Nandha Kumar,
Legal Aid Counsel

ORDER

The petitioner, who is facing trial in C.C.No.519 of 2013, for offence under Sections 138 and 142 of the Negotiable Instruments Act, 1881, pending on the file of the Judicial Magistrate Court No.VI, Coimbatore, has filed this quash petition.

2.Despite service of notice to the respondent dated 13.07.2020 and his name being printed in the cause list, the respondent failed to appear before this Court. Hence, this Court by order dated 04.09.2020 appointed Mr.Nandha Kumar as Legal Aid Counsel for the 2nd respondent.

3.The gist of the complaint is that the petitioner was running a business in the name of M/s.Sathi Motors for Hero Honda, authorized service and spares sale. In course of the development of the business, the petitioner borrowed a sum of Rs.15,00,000/- from the respondent/Financier. On verification of business of the petitioner and his transaction of account and on satisfaction, the respondent agreed to give loan amount of Rs.15,00,000/-. On 16.05.2011, the respondent gave Rs.11,00,000/- by way of a cheque baring No.364992 and on 17.05.2011, he gave Rs.4,00,000/- by way of cash, the petitioner received totally Rs.15,00,000/- from the respondent. On receipt of the loan amount, the petitioner executed a promissory note in favour of the respondent that he agreed to repay the borrowed loan amount with interest at the rate of 18% per annum for a period of six months. Thereafter, the petitioner failed to repay the principle and interest amount to the respondent.

4.On 26.02.2013, the petitioner in repayment of the loan and in discharge of liability, issued a cheque in favour of the respondent for a sum of Rs.15,00,000/- bearing No.039526 drawn on AXIS Bank, Ambathur Branch, Chennai, dated 28.02.2013. When the respondent presented the cheque for collection in his bank viz., IDBI Bank, Dr.Balasundaram Road, Coimbatore on 28.02.2013, the cheque was returned with an endorsement 'FUNDS INSUFFICIENT' with return memo dated 01.03.2013. The respondent issued legal notice on 09.03.2013 addressed to the petitioner and his company. The petitioner received the notice addressed to the company address and the notice sent to the residential address of the petitioner returned on 14.03.2013 to the respondent. Thereafter, the petitioner neither made any reply nor repaid the amount. Hence, the respondent filed a private complaint against the petitioner, against which the present petition.

5.The learned counsel for the petitioner submitted that the complaint of the respondent is beyond the period of limitation and without condoning the delay, taking cognizance of the complaint is contrary to Section 142(b) of the Negotiable Instruments Act. In this case, the cheque is said to be dishonoured on 01.03.2013, the statutory notice received by the petitioner on 12.03.2013 and the respondent lodged a complaint on 03.05.2020. Hence, the date of cause of action arises on 27.03.2013, the complaint came to be lodged by the respondent, 6th day after the expiry of one month from the date of cause of action, which is a bar under Section 142(b) of the

Negotiable Instruments Act.

6.The learned counsel for the petitioner further submitted that through there is a provision to condone the delay in lodging the complaint, which was not adhered either by the respondent or by the learned Judicial Magistrate No.VI, Coimbatore. Hence, he prayed to quash the proceedings against the petitioner.

7.The learned counsel for the respondent submitted that in course of business development, the petitioner approached the respondent/Financier and borrowed a sum of Rs.15,00,000/-. Rs.11,00,000/- was given by way of cheque bearing number 364992 and Rs.4,00,000/- was given by way of cash on 16.05.2011 and 17.05.2011 respectively. In order to discharge the liability, the petitioner issued the cheque bearing number 039526, drawn on Axis Bank, Ambathur Branch, Chennai. When the respondent was presented the cheque for collection in his bank, the cheque was returned as 'FUNDS INSUFFICIENT' and hence, the respondent issued legal notice to the petitioner on 09.03.2013. On receipt of the same, the petitioner did not repay the amount and reply for the same.

8.The learned counsel for the respondent further submitted that the cognizance of the complaint may be taken by the trial Court after the period of limitation, if the complainant/respondent satisfies the Court that he had sufficient cause for not making a complaint within such period. In the sworn statement recorded by the learned Magistrate, it is admitted by the respondent that the legal notice sent to the address of the petitioner received by the petitioner on 21.03.2013. Thereafter, the petitioner neither returned the money nor replied for the same. Now in this case, the cause of action is dated 06.04.2013 and the respondent lodged a complaint on 03.05.2020 which is within the limitation period. Hence, the points agitated by the learned counsel for the petitioner are to be decided only during the trial and the petition to be dismissed.

9.In support of his contention, reliance was placed on the judgment of the Hon'ble Apex Court in the case of "Birendra Prasad Sah Versus The State of Bihar and Anr. reported in AIR 2019 SC 2496" .

10.This Court considered the rival submissions and perused the materials available on record.

11.It is not in dispute that the petitioner borrowed a loan from the respondent and issued cheque in discharge of loan liability in favour of the respondent and the cheque got dishonoured.

12.It is seen that this Court by order dated 26.02.2020, directed the Registry to call for the records in C.C.No.519 of 2013 from the learned Judicial Magistrate No.VI, Coimbatore. As per the order, the copy of the records in C.C.No.519 of 2013 from the learned Magistrate received and this Court perused the same.

13.On perusal of the records, it is seen that the sworn statement of the respondent was recorded on 23.07.2013, in which, it is stated that the legal notice sent to the address of the petitioner, received by him on 21.03.2013. Thereafter, the petitioner neither made payment of money nor sent reply for the same. In this case, the respondent lodged a complaint on 03.05.2020 is within the limitation. After recording of sworn statement, cognizance was taken, the accused appeared on summons and questioned on 28.01.2014 and the evidence of the respondent was recorded by way of an affidavit under Section 145 of the Negotiable Instruments Act on 16.04.2014 and during trial, Exs.P1 to P13 were marked, in which Exs.P8 & P9 are the postal acknowledgement cards dated 12.03.2013 and 21.03.2013. Hence, the contention of filing of the complaint beyond the period of limitation raised by the learned counsel for the petitioner cannot be considered, in view of the specific case is that the statutory notice was received on 21.03.2013. The petitioner/accused denies the same, the postal acknowledgement cards are marked as Exs.P8 & P9. This disputed fact has to be decided by the trial Court.

14.The Hon'ble Apex Court in the case of "Birendra Prasad Sah Versus The State of Bihar and Anr. reported in AIR 2019 SC 2496" held as follows:-

"The complaint was instituted on 11 May 2016. Under Section 142(1), a complaint has to be instituted within one month of the date on which the cause of action has arisen under clause (c) of the proviso to Section 138 6. The proviso however stipulates that cognizance of the 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. Both in paragraphs 7 and 8 of the complaint, the appellant indicated adequate and sufficient reasons for not being able to institute the complaint within the stipulated period. These have been adverted to above. The CJM condoned the delay on the cause which was shown by the appellant for the period commencing from 6 April 2018. However, if paragraphs 7 and 8 of the complaint are read together, it is evident that the appellant had indicated sufficient cause for seeking condonation of the delay in the institution of the complaint.

The High Court has merely adverted to the presumption that the first notice would be deemed to have been served if it was dispatched in the ordinary course."

15.Hence, the points raised by the learned counsel for the petitioner are to be decided only during the trial. Hence, the Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petition is closed.

16.During the pendency of the above case, the case in C.C.No.519 of 2013 has been transferred to the file of the Judicial Magistrate, Fast Track Court at Magistrate Level No.2, Coimbatore and renumbered as C.C.No.75 of 2014.

17.Considering the case is pending from the year 2013, this Court directs the learned Judicial Magistrate, Fast Track Court at Magistrate Level No.2, Coimbatore to complete the trial within a period of three months from the date of lifting of lock down and normal functioning of Court below.

18.This Court places appreciation to Mr.Nandha Kumar, Legal Aid Counsel for the respondent for preparation and effective arguments made in this case.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vv2

To

1.The Judicial Magistrate,
Fast Track Court at Magistrate Level No.2,
Coimbatore.

2.The Judicial Magistrate VI,
Coimbatore.

Cr1.O.P.No.20608 of 2014

RSV(CO)
CB(05/11/2020)