



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.6737 of 2016

and

Crl.M.P. (MD)No.3387 of 2016

K.Palanivelu

...Petitioner/Accused

Vs.

M/s.Globe Green Enterprises,  
Though its Authorized Person &  
Manager K.Dharmaraj,  
No.24, Uthamapalayam Road,  
Bodinayakkanur,  
Theni District - 625 513.

...Respondent/Complainant

**Prayer:** This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the proceedings in S.T.C.No.35 of 2016 pending on the file of the learned District Munsif Cum Judicial Magistrate, Bodinayakkanaur and quash the same.

|                |                 |
|----------------|-----------------|
| For Petitioner | : Mr.R.Manickam |
| For Respondent | : No appearance |

### O R D E R

The petitioner is shown as accused in S.T.C.No.35 of 2016 on the file of the learned Judicial Magistrate, Bodinayakkanaur. It is a private complaint instituted by the respondent herein for the offence under Section 138 of Negotiable Instruments Act.

2.The case of the prosecution is that the complaint was filed before the learned Judicial Magistrate, Bodinayakkanaur, in March 2013. The case was numbered as C.C.No.90 of 2013. Following the judgment rendered in **Dashrath Rupsing Rathod v. State of Maharashtra** reported in **2014 (4) CTC 666**, the learned trial Magistrate returned the case papers on 19.09.2014 with a direction to represent the same before the Judicial magistrate, Sethiyarthoppu. The allegation of the petitioner is that the complainant did not honour the direction given by the learned Judicial Magistrate, Bodinayakkanaur. Instead he simply retained the case bundle with himself. Taking advantage of the Amendment Act 26, 2015, which was enacted to overcome the statutory effect of **Dashrath Rupsing Rathod**, the complainant represented the papers. In the meanwhile there was delay of more than 500 days. According to the petitioner not even a condone delay petition was filed. However, the learned Judicial Magistrate, Bodinayakkanaur mistakenly took the case on file and renumbered same



as S.T.C.No.35 of 2016. Since there is an obvious procedural infirmity, the petitioner wanted this Court to quash the same.

3.Though the respondent has been served and he has entered appearance through counsel, there is no representation on behalf of the respondent/complainant. I am however not persuaded by the submissions of the learned counsel appearing for the petitioner. The cheque in question was of course drawn on ICICI Bank, Orathur Branch, Cuddalore District. But then it was presented by the complainant in Karur Visa Bank Limited, Bodinayakkanaur Branch on 05.11.2012. Therefore, the learned Judicial Magistrate, Bodinayakkanaur very much had the territorial jurisdiction to entertain the complaint. Of course, the position came under cloud following the judgment of the Hon'ble Supreme Court in **Dashrath Rupsing Rathod v. State of Maharashtra** reported in **2014 (4) CTC 666**. But then the very basis of **Dashrath Rupsing Rathod's** case got undermined following the promulgation of Central Act No.26, 2015, whereby the Section 142 of the Negotiable Instrument Act was amended. Section 142(2) of the Negotiable Instruments Act reads as follow:-

"2. In the Negotiable Instruments Act, 1881 (hereinafter referred to as the Principal Act), in Section 6,-

(I) in Explanation I, for clause (a), the following clause shall be substituted namely :-

'(a) "a cheque in the electronic form" means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometrics signature) and asymmetric crypto system or with electronic signature, as the case may by;

(ii) after Explanation II, the following Explanation shall be inserted, namely:-

'Explanation III,- For the purpose of this section, the expressions "asymmertic crypto system", "computer resource", "digital signature", "electronic form" and "electronic signature" shall have the same meanings respectively assigned to them in the Information Technology Act, 2000.'

4.Therefore, there cannot be any dispute that the Judicial Magistrate, Bodinayakkanaur is very much having the jurisdiction to entertain the complaint in question. Of course, the petitioner's counsel is right in airing his grievance that the complainant has not acted as per the original direction of the learned Judicial Magistrate, Bodinayakkanaur. Even if he had acted as per the direction of Judicial Magistrate, Bodinayakkanaur and presented the papers before Judicial Magistrate, Sethiyarthoppu, following the amendment to the Central Act, the bundle would have come back to the learned Judicial Magistrate, Bodinayakkanaur.



5.As regards the omission on part of the Court below in accepting the papers even without condone delay petition, I am of view of that this has not resulted in any miscarriage of justice. Only if there has been an abuse of legal process or there is miscarriage of justice, the inherent powers of this Court under Section 482 of Cr.P.C., are to be exercised. In any event, it cannot be a ground for quashing the impugned proceedings. Therefore, I find no ground to interfere with the impugned proceedings. The criminal original petition stands dismissed.

6.However, the petitioner is based in Cuddalore, the prosecution has been instituted in Judicial Magistrate, Bodinayakkanaur. Therefore it would be difficult for the petitioner to attend the hearings on every occasion. Therefore, the personal appearance of the petitioner is dispensed with. Of course the petitioner has to be represented by his counsel when he is absent. The petitioner also has to appear when his presence is absolutely necessary and imperative. I make it clear that I have not gone into the merits of the matter. All the contentions and defences of the petitioner are left open. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

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/ /2020

Sub Assistant Registrar(CS)

Ias

To

The District Munsif-cum-Judicial Magistrate,  
Bodinayakkanaur.

+1 CC to M/s.R.MANICKAM, Advocate ( SR-2627[F] dated 23/01/2020 )

Crl.O.P(MD)No.6737 of 2016  
21.01.2020

AP(15/06/2020) 3P 3C