

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.03.2021

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.16541 of 2019

AND

CrI.M.P. No.8315 of 2019

John A. Nirakkal

.. Petitioner

Vs.

R.Palanisamy

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in respect of the complaint filed by the respondent herein in C.C.No.698 of 2017 against the petitioner on the file of the Judicial Magistrate Court No.II (FTC-Magisterial Level), Coimbatore and quash the same.

For Petitioner : Mr.M.Gnanasekar

For Respondent : No appearance

O R D E R

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.698 of 2017 on the file of the Judicial Magistrate Court No.II (FTC-Magisterial Level), Coimbatore.

2. The respondent has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act") against two accused persons and the petitioner has been arrayed as A-2 in the complaint.

3. A-1 filed a quash petition before this Court in CrI.O.P.No.22112 of 2018. This Court, by an order dated 29.07.2019, quashed the proceedings insofar as A-1 is concerned.

4.The learned counsel for the petitioner submitted that the benefit of the order passed in favour of A-1 will enure to the petitioner also. The learned counsel in order to substantiate his submissions, specifically relied upon the following portions of the order and the same is extracted hereunder:

"5. The next point that was urged by the learned counsel for the petitioner is that the cheque was dishonored on 11.04.2017 and as per the Section 138 of

the Negotiable Instruments Act, notice has to be issued within a period of thirty days from the date on which the cheque was returned. In this case, admittedly the notice was issued upon the petitioner only on 09.06.2017 and therefore, it is beyond the time fixed by the Act. Therefore, the learned counsel submitted that the proceedings will have to be quashed on this ground also.

6. The learned counsel for the respondent submitted that admittedly in this case, the cheque was issued on behalf of the Hi-Care LATEX (P) Limited and the petitioner is the authorized signatory of the Company. The learned counsel submitted that, there is a specific allegation in the complaint to the effect that the petitioner is also involved in the day-to-day affairs of the Company. Therefore, the learned counsel submitted that the complaint is maintainable even as against the petitioner and all the other grounds that have been taken by the learned counsel for the petitioner has to be decided only during the course of trial.

7. This Court has carefully considered the submissions made on either side and also the materials available on record.

8. This Court finds force in the submissions of the learned counsel for the petitioner. Both the grounds raised by the learned counsel for the petitioner is accepted by this Court and this Court finds that the complaint is not maintainable as against the petitioner. There is no valid reply for the legal grounds raised by the learned counsel for the petitioner and in the considered view of this Court, the continuation of the proceedings as against the petitioner is an abuse of process of Court."

5. When this Court quashed the proceedings initiated against A-1, this Court took into consideration two issues. The first issue was that A-1 was not a signatory of the cheque and there were no sufficient allegations made against him to satisfy the requirements under Section 141 of the NI Act. This ground obviously will not be available to the petitioner, since the petitioner was the signatory to the cheque. The second issue that was taken up for consideration by this Court was the delay in issuance of the statutory notice after the cheque was dishonoured. This Court upheld this ground also in the above order. This Court found that the statutory notice was issued

beyond the time prescribed under the NI Act. This finding given in favour of A-1 will enure to the benefit of the petitioner also. Where the statutory notice has been issued beyond the time limit prescribed under the NI Act, the consequent complaint itself becomes not maintainable.

In view of the above discussion, the proceedings in C.C.No.698 of 2017 on the file of the Judicial Magistrate Court No.II (FTC-Magisterial Level), Coimbatore, is quashed insofar as the petitioner is concerned and this Criminal Original Petition shall stand allowed. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya

To

1 The Judicial Magistrate No.II
(FTC-Magisterial Level)
Coimbatore

+1cc to Mr.M.Gnanasekar, Advocate Sr.No.17812

Crl.O.P. No.16541 of 2019

SKY (CO)
NR 20/04/2021



WEB COPY