



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2021

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Cr1.O.P.No.20073 of 2017
and
Cr1.M.P.No. 12098 of 2017

T.Sournavel

..Petitioner

Vs.

S.Krishnaveni

..Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure (Cr.P.C) call for the records and to quash the criminal proceedings in S.T.C.No.2937 of 2016 on the file of the Judicial Magistrate Court No.III, Coimbatore.

For petitioner : Mr.N.Vanaraj

For respondent : Mr.T.Shanmugam

O R D E R

This Criminal Original Petition has been filed to quash the complaint in S.T.C.No.2937 of 2016, pending on the file of the learned Judicial Magistrate Court No.III, Coimbatore.

2. Brief facts which are necessary for the disposal of this Criminal Original Petition is as follows:-

The accused borrowed a sum of Rs.4 lakhs from the complainant on 19/4/2010. Towards payment of the abovesaid amount, cheques were issued and when presented for encashment, the same were dishonoured on 16/6/2016 and 22/6/2016, respectively. Hence, issued a statutory notice of demand, dated 26/7/2016, beyond the period of limitation of 30 days, as envisaged under Section 138 (b) of the Negotiable Instruments Act.

3. Heard the learned counsel appearing on either side and perused the materials available on record.



4.The learned counsel appearing for the petitioner submitted that the respondent has not complied with the said provisions of the Negotiable Instruments Act. Hence the respondent cannot invoke the provisions of the Negotiable Instruments Act, to punish the petitioner. Demand notice itself is sent beyond the period of thirty days which is against the provision of Section 138 of the Negotiable Instruments Act. Therefore, the complaint cannot be maintained in the eye of law and hence liable to be quashed.

5.On a perusal of the very Section 138 of the Negotiable Instruments Act, makes it very clear that unless the demand is for payment of the amount is made by giving a notice in writing to the drawer of the cheque within 30 days, of the receipt of information as to the dishonour of the cheque. The prosecution under Section 138 of the Negotiable Instruments Act itself is not permissible. Therefore the complaint of respondent against the petitioner under the provision of N.I. Act cannot be maintainable and the prosecution against the petitioner would not survive. Accordingly, proceedings pending under Section 138 of the Negotiable Instruments Act against the petitioner before the trial Court is quashed.

6. In the result, this Criminal Original Petition is allowed. Complaint in S.T.C.No.2937 of 2016, pending on the file of the learned Judicial Magistrate Court No.III, Coimbatore, is quashed. Consequently, connected Criminal Miscellaneous Petition No.12098 of 2017 is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

Mvs.

To

The Judicial Magistrate Court No.III,
Coimbatore.

+1cc to Mr.N.Vanaraj, Advocate SR.No.61761

CrI.O.P.No. 20073 of 2017

RSV(CO)
GN(13/12/2021)