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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.09.2021

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THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

CRL.O.P.NO.11222 OF 2017

AND

CRL.M.P.NOS.9016 & 12096 OF 2017

G.Murugan @ Murugesan

.. Petitioner / Accused

Vs.

K.N.Karuppanan

...Respondent / Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order dated 02.02.2017 in C.M.P.No. 4122 of 2015 in S.T.C.No. 278 of 2011 by the Judicial Magistrate Court No.I, Gobichettipalayam.

For Petitioner : Mr.Nandha Kumar

For Respondent : Mr.C.Rajan

ORDER

The present Criminal Original Petition has been filed questioning the order dated 02.02.2017 in C.M.P.No. 4122 of 2015 in S.T.C.No. 278 of 2011 passed by the Judicial Magistrate No.1, Gobichettipalayam.

2. The said order came to be passed on a petition filed by the defacto complainant in S.T.C.No. 278 of 2011.

3. It must be mentioned that the said S.T.C.No. 278 of 2011 had been filed taking advantage of Sections 138, 141 and 142 of the Negotiable Instruments Act 1881 presented as a



private complaint before the competent Court/Judicial Magistrate No.1, Gobichettipalayam.

4. The necessity for filing such a complaint arose owing to the fact that the defacto complainant alleged that the respondent/accused therein had issued a cheque, which when presented for payment had been returned with the reason "insufficient funds". When the said S.T.C.No. 278 of 2011 was pending, an application came to be filed by the de-facto complainant in C.M.P.No. 4122 of 2015. By way of the said Miscellaneous Petition, the defacto complainant sought permission to dismiss S.T.C.No. 278 of 2011 with liberty to file a fresh complaint and return the document to enable the defacto complainant to file a fresh complaint. That petition was filed because the complaint had been presented on the basis of a legal notice in which one week time alone was granted to the respondent/accused to make part of the amount mentioned in the cheque which cheque had been returned by the Bankers with the endorsement "insufficient funds".

5. Mr. Nandha Kumar, learned counsel for the petitioner very strenuously argued that the notice cannot be the basis for any complaint since in a legal notice, the statute necessitates giving 15 days time for making payment towards the amount mentioned in the cheque, but however, only one week time was granted. The legality or otherwise of the notice, of which, I am not prepared to enter into any discussion for the reasons stated herein, had actually not been served on the respondent/accused.

6. The notice was sent to the address where the respondent/accused resided but the door was locked. It could not be served. Thereafter, on two separate dates intimation was given about the facts that a notice had been issued and sent to the respondent/accused, who did not take steps to collect the notice from the post office. After waiting for the stipulated time period, the notice was returned back to the defacto complainant. After getting back the return, the complaint was filed as stated within the period of 15 days as contemplated in the statute. Since it was taken cognizance and it was determined that it was a curable irregularity, the petition in C.M.P.No. 4122 of 2015 came to be filed by the defacto complainant seeking permission to withdraw or rather inviting an



order to dismiss the said S.T.C.No. 278 of 2011 with permission to file a fresh complaint.

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7. The basis for which such a request was made was a Judgment of the Hon'ble Supreme Court reported in 2015-1-L.W. (Cr1.) 305 [Yogendra Pratap Singh Vs. Savitri Pandey & Anr.] wherein such a procedure had been affirmed and contemplated by the Hon'ble Supreme Court.

8. Taking note of the said Judgment, the Judicial Magistrate No.1, Gobichettipalayam, also passed necessary orders dismissing the said complaint but at the same time granting permission to file a fresh complaint within a period of 30 days.

9. It must also be mentioned that in the said Judgment by the Hon'ble Supreme Court, noting the fact that a second complaint would be barred by the law of limitation if the starting period were to be calculated from the date when the cause first arose, namely the cheque return date or when the notice was issued calling upon the accused to pay the amount within a period of 15 days, the Hon'ble Supreme Court had also stated that the delay if any in filing the second complaint can also be condoned.

10. Accordingly, the learned Judicial Magistrate No.1, Gobichettipalayam, appears to have condoned the delay in filing the second complaint. That act was another cause for grievance by Mr. Nandha Kumar, learned counsel for the petitioner who pointed out that this Court while taking on file the present petition had granted stay and in spite of such stay, the learned counsel complained, the Judicial Magistrate No.1, had condoned the delay. But I would not read much into that particular fact because the Hon'ble Supreme Court in the Judgment referred supra had stated that the delay can be automatically condoned provided the second complaint is filed within a period of 30 days from the date of the order in the first instance.

11. The only issue which has to be now addressed is the grant of time of one week in the legal notice.



12. Mr. Nandha Kumar, learned counsel for the petitioner took serious umbrage over this aspect. It is a second complaint has now been taken cognizance and is now pending. Let this particular issue be raised by the petitioner herein before the jurisdictional Magistrate Court and let the Magistrate answer that in manner known to law taking necessary recourse to the legal provisions.

13. In this connection, I am confident that the Magistrate will pass necessary orders after hearing both sides. After passing such orders, let consequences follow, either the complainant would suffer or the complaint would progress for further trial. I am not inclined to interfere with the order dated 02.02.2017 in C.M.P.No. 4122 of 2015 in S.T.C.No. 278 of 2017 before the Judicial Magistrate No.I, Gobichettipalayam, which is the focus of the present Criminal Original Petition.

14. This Criminal Original Petition is therefore dismissed however giving liberty to the petitioner herein to raise the issue of grant of just one week time in the advocate notice prior to the filing of the complaint under Section 138 of the Negotiable Instruments Act. Let the Magistrate address the said issue in manner known to law.

15. Mr. Nandha Kumar, learned counsel for the petitioner, also raised the issue of service of notice, and whether it can be deemed sufficient or not.

16. In this connection, Mr.C.Rajan, learned counsel for the respondent drew the attention of this Court to Section 69 of Cr.P.C., and also to two Judgments of this Court, namely, (1) CDJ 2008 MHC 2118 [Bipin Mehta Vs. Chandra Mohan]; and (2) CDJ 2015 MHC 4557 [M/s. Jayalakshmi Textiles, rep. by partner Balasubramanian and another Vs. S.K.Kolandasamy], both by learned Single Judges of this Court. These Judgments may also be placed before the said Magistrate and the learned Magistrate may address the issue in the manner known to law.



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17. In the result, the Criminal Original Petition is dismissed with liberty granted as aforesaid. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

vsg

To

The Judicial Magistrate No.1,
Gobichettypalayam.

+2ccs to Mr.C.Rajan, Advocate, S.R.No.44974

Cr1.O.P.No.11222 of 2017
And
Cr1.M.P.Nos. 9016 & 12096 of 2017

PVS(CO)
RLP(20/10/2021)