



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.12.2021**

CORAM:

THE HONOURABLE DR.JUSTICE **G. JAYACHANDRAN**

Crl.O.P. (MD)No.193 of 2017

and

Crl.M.P (MD)Nos.174 and 175 of 2017

P.Chandrasekar

... Petitioner/Sole Accused

Vs.

S.Marichamy

... Respondent/Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the case in C.C.No.190 of 2016 on the file of the District Munsif cum Judicial Magistrate, Aundipatty and quash the same.

For Petitioner	: Mr.C.Mayilvahana Rajendran
For Respondent	: Mr.S.Gokulraj

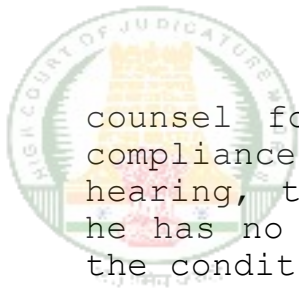
O R D E R

This petition is filed to quash the private complaint filed under Section 138 of Negotiable Instruments Act, which was taken on file in C.C.No.190 of 2016 by the District Munsif cum Judicial Magistrate, Aundipatti. The complaint against the petitioner is in respect of 5 cheques issued by him for total sum of Rs.1,26,000/-, the trial court has taken cognizance of the aforesaid complaint and has caused notice.

2. This petition is filed by the accused for quashing the private complaint on the ground that the cheques were not issued for any illegal enforceable debt. The complaint was filed after expiry of limitation. The discrepancy regarding the quantum of money borrowed and the cheques issued would go to the root of the complaint and therefore, the same has to be quashed.

3. When the matter came up for admission, this Court granted stay of further proceedings on condition the petitioner deposits a sum of Rs.1,04,000/- on or before 23.01.2017 failing which Criminal Original Petition will be dismissed automatically without further reference. However, when the matter was adjourned on subsequent dates, the learned counsel appearing for the petitioner could not furnish the details about the compliance of the conditional order.

When the matter was taken up lastly on 10.12.2021, the learned



counsel for the petitioner sought time to verify regarding the compliance of the condition. Today, when the matter is taken up for hearing, the learned counsel for the petitioner would submit that he has no instruction from his client regarding the compliance of the conditional order passed by this Court.

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4. However, the learned counsel for the petitioner would submit that the complaint has to be quashed on merits since there is discrepancy in facts regarding the issuance of subject cheques. The actual debt and the delay in instituting the complaint is beyond limitation. This Court, on considering the above submission, finds that the factual discrepancies what are now canvassed herein have to be canvassed before the trial court. Disputed facts are to be decided in trial. It is not the matter for the High Court to exercise its inherent power and quash the complaint.

5. As far as the point of limitation is concerned, records would indicate that five(5) cheques dated 08.04.2015 were presented for collection at the State Bank of India Kaniyapillaipatti. Cheques were bounced for insufficient fund along with memo dated 17.04.2015. While so, within a period of 30 days, statutory notice has to be issued by the complainant on 11.05.2015. On receipt of the notice, the respondent/accused has caused reply notice dated 18.05.2015. In paragraph No.11 of the complaint, the complainant explained the reason for filing the complaint after 15.06.2015. It is for the trial court to test the reasons from the record. In any case, it is for the petitioner herein to canvass the said point before the trial court. Hence, this petition is dismissed directing the Magistrate to expedite the trial and dispose it as expeditiously as possible, preferably, within a period of four(4) months from the date of receipt of a copy of the order.

6. In fine, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

CM

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To :

1. The District Munsif cum Judicial Magistrate,
Aundipatty.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to :

The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.GOKULRAJ, Advocate (SR-38424[F] dated 13/12/2021)

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USK (29.12.2021) 3P 5C