



Crl.O.P.Nos.16252 and 16254 of 2019
& Crl.M.P.Nos.8124 to 8126 & 8128 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :14.10.2022

Pronounced on : 27.10.2022

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.16252 and 16254 of 2019
& Crl.M.P.Nos.8124 to 8126 & 8128 of 2019

D.Palani

... Petitioner
in both cases

/versus/

Centre of Childrens Film Education
Rep.by S.Gunaseakaran
Son of V.Subbaiya Naidu,
No.296, Phase -II TNHB,
Tirupattur, Vellore District.

... Respondent
in both cases

Prayer in both cases: Criminal Original Petitions are filed under Section 482 of Cr.P.C, to call for the records in S.T.C.No.410/2019 & S.T.C.No.411 of 2019 respectively on the file of the Judicial Magistrate No.I at Tirupattur, Vellore District and quash the same.

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For Petitioner : Mr.K.Selvaraj
in both cases

For Respondent : Mr.C.Arun Kumar
in both cases

COMMON ORDER

These Criminal Original Petitions are filed under Section 482 of the Criminal Procedure Code to quash the private complaint filed under Section 138 of Negotiable Instruments Act, 1881.

2. The brief facts of the case, dates and events:-

The sole accused in S.T.C.No.410/2019 & S.T.C.No.411/2019 on the file of Judicial Magistrate No.1, Tirupattur, Vellore District is the petitioner herein. The private complaint under Section 138 of the Negotiable Instruments Act, alleges that, as consideration for one year screening right of the children movie titled “KULANDAHIGALIN UNGALAL MUDIYUM”, the petitioner/accused gave two post dated cheques bearing Nos:000143 dated 30/11/2018 and 000144 dated 31/12/2018 each for Rs.2,25,000/- (totally Rs.4,50,000) drawn from Karur Vysya Bank, Kumarapalayam Branch, Namakkal District from the savings bank account



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maintained by the accused. The cheque bearing Nos:000143 dated 30/11/2018 was presented for collection on 28/01/2019 but returned with a memo dated 29/01/2019 stating “payment stopped by the drawer”. The complainant sent statutory notice dated 01/02/2019 through registered post and same was received by the accused on 05/02/2019. Receiving the notice, the accused caused reply denying liability and the said reply notice dated 12/02/2019 was received by the complainant on 13/02/2019.

3. The private complaint presented on 20/02/2019 stating that, the cause of action arose for the dishonouring of the cheque on 30/11/2018 and the offences committed thereon after the cheque returned on 29/01/2019 and on 05/02/2019, when the legal notice received by the accused. Hence, the complaint is within time and there is no deviation or expiry of limitation.

4. In the petition to quash, the accused apart from contending that the cheque was not issued for any enforceable debt, had pleaded that the complaint filed



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WEB before the expiry of 15 days from the date of receipt of the statutory notice is non-est in law. According to the petitioner, no Court can take cognizance of the offence punishable under Section 138 of Negotiable Instruments Act, unless on a written complaint which should be made within one month of the date on which the cause of action arose under clause (c) of the proviso to Section 138 of N.I.

5. As per proviso to clause (c) of Section 138, the cause of action shall arise only on expiry of 15 days from the date of receipt of the notice by the accused. In the instant case, the notice was received by the accused on 05/02/2019. Therefore, the cause of action arose only on the expiry of the 15th day, i.e., 21/02/2019. Since, the impugned complaint was filed on 20/02/2019 prematurely a day before cause of action arose, the said complaint is liable to be quashed.

6. In support of his submission, the Learned Counsel for the petitioner/accused had relied upon the judgment of the Supreme Court rendered in ***Yogendra Pratap Singh -vs- Savitri Pandey and another*** reported in 2014 [10]



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SCC 713 and **Econ Antri Limited -vs- Rom Industries Limited and another** reported in **2014[11] SCC 769**.

7. In response to the above submissions, the Learned Counsel for the complainant/respondent relying upon the judgement of the Hon'ble Supreme Court rendered in **Rathish Babu Unnikrishnan -vs- State (Govt. of NCT of Delhi) and another** reported in **(2022 SCC ONLINE SC 513)** submitted that, the Court should be slow to grant the relief of quashing the complaint at a pre-trial stage, when the factual controversy is in the realm of possibility. Without adducing evidence to substantiate the same, quashing the complaint at preliminary stage scuttling the criminal prosecution will cause grave and irreparable consequence. Limitation is a mixed question of law and fact. In the absence of evidence of sterling quality and impeccable in nature pre-trial disposal of the complaint is not legally permissible. In alternate, the Learned Counsel also pleaded that, in case the Court arrive at a conclusion that the complaint is *non-est* in law on the ground that the complaint was filed pre-maturely before cause of action to file the complaint accrued, then the respondent/complainant should be permitted to file fresh complaint with condone



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WEB delay application.

8. For appreciating the contention raised by the Learned Counsels, it would be necessary to reproduce Section 138 and 142 of Negotiable Instruments Act, 1881, which are as under:-

Section 138 of Negotiable Instruments Act, 1881.

138. Dishonour of cheque for insufficiency, etc., of funds in the account.—

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of



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this Act, be punished with imprisonment for [a term which may extend to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt



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or other liability” means a legally enforceable debt or other liability.

Section 142 of Negotiable Instruments Act, 1881:-

“142. Cognizance of offences.-[(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138:

Provided that the cognizance of a complaint may be taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.

(c) no court inferior to that of a Metropolitan



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Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138.

(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”



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9. In *Yogendra pratap Singh -vs- Savitri Pandey and another*
reported in **2014 (10) SCC 713**, wherein it is stated as below:-

30. Section 138 of the NI Act comprises of the main provision which defines the ingredients of the offence and the punishment that would follow in the event of such an offence having been committed. Appended to this section is also a proviso which has three clauses viz. (a), (b) and (c). The offence under Section 138 is made effective only on fulfilment of the eventualities contained in clauses (a), (b) and (c) of the proviso. For completion of an offence under Section 138 of the NI Act not only the satisfaction of the ingredients of offence set out in the main part of the provision is necessary but it is also imperative that all the three eventualities mentioned in clauses (a), (b) and (c) of the proviso are satisfied. Mere issuance of a cheque and dishonour thereof would not constitute an offence by itself under Section 138.



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10. The Hon'ble Supreme Court in ***Kusum Ingots & Alloys Ltd -vs- Pennar Peterson Securities Ltd*** reported in **2000 (2) SCC 745** had stated that the following 5 ingredients are required to be satisfied to make out a case under Section 138 of Negotiable Instruments Act:-

“(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;

(ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;



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(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.”

11. While considering the question—‘can an offence under Section 138 of the Negotiable Instruments Act, be said to have been committed when the period provided in clause (c) of the proviso has not expired’, the Hon’ble Supreme Court in *Yogendra Pratap Singh case cited supra*, after considering the conflicting judgments rendered by different High Courts, concluded that,

“35.....A bare reading of the provision contained in clause (c) of the proviso makes it clear that no complaint can be filed for an offence under Section 138 of the NI Act unless the period of 15 days has elapsed. Any complaint filed before



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the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint at all in the eye of the law. It is not the question of prematurity of the complaint where it is filed before the expiry of 15 days from the date on which notice has been served on him, it is no complaint at all under law. As a matter of fact, Section 142 of the NI Act, inter alia, creates a legal bar on the court from taking cognizance of an offence under Section 138 except upon a written complaint. Since a complaint filed under Section 138 of the NI Act before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint in the eye of the law, obviously, no cognizance of an offence can be taken on the basis of such complaint. Merely because at the time of taking cognizance by the court, the period of 15 days has expired from the date on which notice has been served on the drawer/accused, the court is not clothed with the jurisdiction to take cognizance of an offence under Section 138 on a complaint filed before the expiry of 15 days from the date of receipt of notice by the drawer of the cheque.

36. A complaint filed before the expiry of 15 days from the date on which notice has been served on drawer/accused cannot be said to disclose the cause of action in terms of

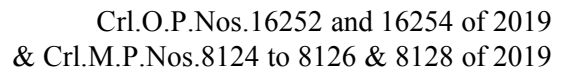


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clause (c) of the proviso to Section 138 and upon such complaint which does not disclose the cause of action the court is not competent to take cognizance. A conjoint reading of Section 138, which defines as to when and under what circumstances an offence can be said to have been committed, with Section 142(b) of the NI Act, that reiterates the position of the point of time when the cause of action has arisen, leaves no manner of doubt that no offence can be said to have been committed unless and until the period of 15 days, as prescribed under clause (c) of the proviso to Section 138, has, in fact, elapsed. Therefore, a court is barred in law from taking cognizance of such complaint. It is not open to the court to take cognizance of such a complaint merely because on the date of consideration or taking cognizance thereof a period of 15 days from the date on which the notice has been served on the drawer/accused has elapsed. We have no doubt that all the five essential features of Section 138 of the NI Act, as noted in the judgment of this Court in Kusum Ingots & Alloys Ltd. [Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd., (2000) 2 SCC 745.....”

12. The facts of the *Yogendra Pratap Singh* case cited *supra*, is almost identical to the case in hand. In *Yogendra Pratap Singh* case, statutory notice



13. The plea of the Learned Counsel for the respondent/complainant is that, in exercise of the right to file fresh complaint, it is to be noted that under Section 142(b) of the Negotiable Instruments Act, the complaint ought to be filed in writing within one month from the date of cause of action as prescribed under clause (c) of Section 142 of the Negotiable Instruments Act. In case, complainant is unable to file the complaint within the period of one month and if the complainant satisfies Court that there is sufficient cause for not making a complaint within such period, the proviso to



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Section 142(b) of Negotiable Instruments Act enables the Court to take cognizance of the complaint beyond the time prescribed.

14. In fine, I conclude with the words of the Hon'ble Supreme Court in *Yogendra Pratap Singh Case*, 'no complaint can be maintained against the drawer of the cheque before the expiry of 15 days from the date of receipt of notice because the drawer/accused cannot be said to have committed any offence until then. The complaint under Section 138 of Negotiable Instruments Act filed before the expiry of 15 days of service of notice could not be treated as a complaint in the eye of the law and criminal proceedings initiated on such complaint are liable to be quashed.'

15. In the result, these ***Criminal Original Petitions are Allowed***. The complaint in S.T.C.No.410/2019 & S.T.C.No.411/2019 on the file of Judicial Magistrate-I, Thirupattur, Vellore District are hereby quashed. Consequently, connected Miscellaneous Petitions are closed.



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Index :Yes/No
speaking order/non speaking order
bsm

To:-

1. The Judicial Magistrate No.I, Tirupattur Vellore District.



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DR.G.JAYACHANDRAN,J.

bsm

Pre-delivery common order made in
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