



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Cr1.R.C. (MD)Nos.255 of 2021

S.Amirtha Raj

... Petitioner/Complainant

Vs.

Sudha

... Respondent/Accused

Prayer : This Criminal Revision has been filed under Section 397 and 401 of Criminal Procedure Code, to set aside the order passed in Cr.M.P.No.1302 of 2020 on the file of Judicial Magistrate Court No.II, Padmanabhapuram dated 05.08.2020 and allow this revision petition.

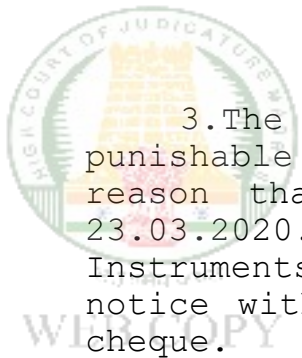
For Petitioner

: Mr.Karthick R.J.

ORDER

This Criminal Revision Petition has been filed to set aside the order passed in Cr.M.P.No.1302 of 2020 on the file of Judicial Magistrate Court No.II, Padmanabhapuram dated 05.08.2020, thereby refuse to take cognizance on the complaint filed by the petitioner for the offences punishable under Section 138 of Negotiable Instruments Act.

2.The petitioner is the complainant and the respondent is an accused. The petitioner lodged a complaint for the offences under Section 138 of Negotiable Instruments Act, alleging that on 01.12.2019, the respondent borrowed a sum of Rs.3,00,000/- from the petitioner. However, to repay the said amount, she issued a cheque dated 06.01.2020 for a sum of Rs.3,00,000/-. On instructions, it was presented for collection and the same was returned dishonoured for the reason "insufficient fund" by the return memo dated 23.03.2020. The petitioner caused statutory notice as contemplated under Section 138(b) of Negotiable instruments Act on 04.06.2020 and the same was received by the respondent on 12.06.2020. Even after receiving of the same, the respondent failed to repay the amount, as such the petitioner lodged the complaint.



3. The Court below refused to take cognizance for the offences punishable under Section 138 of Negotiable Instruments Act, for the reason that the cheque was returned by the return memo dated 23.03.2020. As per the provisions under Section 138 of Negotiable Instruments Act, the petitioner ought to have issued statutory notice within a period of 30 days from the date of return of the cheque.

4. The learned counsel pointed out that the Hon'ble Supreme Court of India by its order dated 23.03.2020 in Suo Motu Writ Petition (Civil) No. 3 of 2020 held in the Covid-19 pandemic situation as follows:

"2. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions:

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Section 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the Court or Tribunal can condone delay) and termination of proceedings."

5. Thereby the Hon'ble Supreme Court to condone the period from 15.03.2020 till 14.03.2021, shall stand excluded in computing the period prescribed under the provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881. Therefore, the Court below



ought not have refused to take cognizance on the ground that the petitioner caused statutory notice after expiry of 30 days.

6. In view of the above, the impugned order passed in Cr.M.P.No.1302 of 2020 by the learned Judicial Magistrate Court No.II, Padmanabhapuram dated 05.08.2020, is set aside and this Criminal Revision petition is allowed. The learned Judicial Magistrate No.II, Padmanabhapuram, is directed to take cognizance for the offences punishable under Section 138 of Negotiable Instruments Act and issue summons to the accused, if otherwise in order.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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 Judicial Magistrate No.II, Padmanabhapuram.

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