



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:28/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.3872 of 2019

and

Crl.MP(MD)Nos.2278 and 2279 of 2019

WEB COPY

Muthu Vazhivittan

: Petitioner/Sole Accused

Vs.

Chidambaram

: Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.19 of 2019 pending on the file of the Judicial Magistrate, Fast Track Court (ML), Thoothukudi and quash the same.

For Petitioner

: Mr.SP.Vijay Nivas

For Respondent

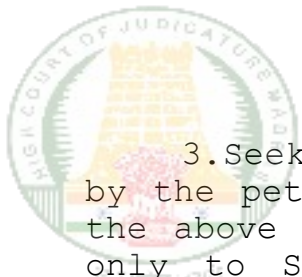
: Mr.N.Pragalathan

O R D E R

This criminal original petition is filed seeking quashment of the case in CC No.19 of 2019 pending on the file of the Judicial Magistrate, Fast Track Court (ML), Thoothukudi.

2.The case of the respondent in brief:-

He lodged a complaint under section 200 Cr.P.C against this petitioner making the following allegations:- He and the accused were known to each other. In the month of February 2018, the accused approached him demanding Rs.5,00,000/- as loan for the purpose of investing in a Solar Power Company. The above said amount was transferred to one Senthivel account, who was the common friend between them. Again on 17/07/2018, the accused came to his house and demanded Rs.2,00,000/- and promised to repay the same within a month. At that time, he handed over a signed cheque drawn on Kamuthi State Bank of India for Rs.7,00,000/-. The accused requested the complaint to wait for one month for presentation of the cheque for collection. As per the direction, that was presented for payment on 20/09/2018, in the State Bank of India, Thoothukudi. But that was returned dishonoured. After complying statutory formalities, the complaint has been filed stating this petitioner committed the offence under section 138 of the Negotiable Instruments Act. The case was taken on file by the Judicial Magistrate (Magisterial Level), Thoothukudi and assigned CC No.19 of 2019.



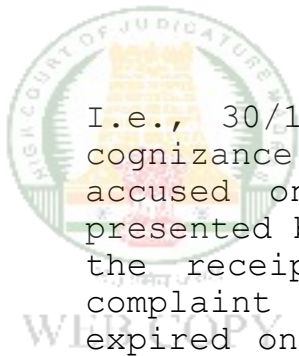
3. Seeking quashment of the same, this petition came to be filed by the petitioner on the ground that he is only a land broker and the above said amount, mentioned in the complaint, was transferred only to Senthil Vel account for purchasing the land in Survey Nos.194/7C, 195/14, 201/7, 203/18, 228/2A, 2B, 5, 8. The registration of the above said land was also made on 09/09/2018. Thereafter, the respondent came to know that the land was sold to him for excessive amount. So he started to threaten the petitioner to return amount for the purchase amount. Actually under force and threat, the above said cheque was obtained. The cheque was issued on condition that the above said property should be registered in the name of the petitioner's name on or before 08/08/2018, otherwise that can be cancelled. Against the above said undertaking, the complaint is filed to return the property. So, the cheque was also cancelled. So the cheque has been issued only for security purpose and not for discharging any liability. Simultaneous complaint was filed before the Inspector of Police Town Police Station, Thoothuudi, which was also registered in Crime No.436 of 2018. That was challenged before this court and stay was also granted.

4. Heard both sides.

5. During the course of argument, it was submitted by the learned counsel appearing for the petitioner that the complaint was filed, much after the expiry of the limitation period. So according to the petitioner, the legal notice was received, on 20/10/2018 and the complaint was filed on 21/05/2019, which is beyond the period of limitation. So on that ground, interim stay was granted by this court. Finding that the copy of the complaint filed by both parties contains different date of presentation, the entire records have been called for from the trial court.

6. Without going into the factual aspect, we can straightaway go to the period limitation. The factual aspect, that has been given by the petitioner cannot be considered in this petition. Whether the cheque was issued only as security for the registration of the sale deed in favour of the de-facto complainant or it was obtained by threat, coercion etc., can be a matter for consideration during the course of trial. Originally, the copies of the documents have been submitted by the trial court. Finding that the original records were not submitted, the Registry was called for the original records, in pursuance of the above said direction original records submitted.

7. From the court records, it is seen that it was presented, on 30/11/2018 and on that date, the complainant was present and the trial court directed the matter to be listed on 14/12/2018 after checking the complaint. Again it was called for and it was ordered to be posted on 04/01/2019. It was presented on 08/01/2019 and re-presented on 25/01/2019 and taken cognizance on 15/02/2019 after the



I.e., 30/11/2018 must be taken into account and not the date of cognizance of the offence. The legal notice was received by the accused on 20/10/2018. Within a month, it ought to have been presented before the concerned court within 15 days from the date of the receipt of the notice on 04/11/2018. From 04/11/2018, the complaint ought to have been filed within thirty days, which also expired on 04/12/2018. But from the above said facts, it is seen that it has been presented well within the period of limitation I.e., on 20/11/2018.

8.The contention of the petitioner that it is barred by limitation is not correct on record. In the judgment cited by the petitioner, notice was issued on 03/04/2004 and it was received by the accused on 04/08/2004. The complaint was filed on 31/05/2004, which is beyond 30 days period with a delay of 7 days. No petition was filed for condoning the delay. Straightaway, it was taken cognizance. Only on that ground, the case was quashed. As mentioned above, the date of presentation of the complaint must be taken into account and not the cognizance of the offence. So this ground is not available to the petitioner and it is liable to be rejected.

9.In respect of the other contention with regard to the legally enforceable liability, it cannot be a matter for consideration in this petition. So on that ground also, the petition is liable to be dismissed.

10.In the result, this criminal original petition is **dismissed**. However, considering the fact that it is a case of the 2019, there shall be a direction to the Judicial Magistrate, Fast Track Court (ML), Thoothukudi to expedite the trial process and complete the same, within a period of five months from the date of receipt of a copy of this order and the report the same the Registry. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD-I)

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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,

The Judicial Magistrate,
Fast Track Court (ML),
Thoothukudi.

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Copy to

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.PRAGALATHAN, Advocate (SR-15207[F] dated
29/03/2022)

+1 CC to M/s.SP.VIJAY NIVAS, Advocate (SR-15165[F] dated 29/03/2022
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