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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.8557 of 2019

and

Crl.MP(MD)Nos.5368 and 5369 of 2019

S.Magheshwari : Petitioner/Sole Accused

Vs.

Annamalai : Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.86 of 2017 on the file of the Judicial Magistrate No.1, Dindigul and quash the same.

For Petitioner : Mr.I.Saliyakhan
For Respondent : Mr.V.Karuna

O R D E R

This criminal original petition is filed seeking quashment of the case in CC No.86 of 2017 on the file of the Judicial Magistrate No.1, Dindigul.

2.The case of the prosecution in brief:-

It is a case of private complaint. The respondent herein filed a private complaint setting out the following facts. The petitioner herein obtained a loan amount of Rs.7,50,000/- promising to repay the same within two months. On 09/04/2017, towards discharge of the above said loan amount, she handed a cheque, dated 09/06/2017 drawn the cheque in favour of the complainant and the cheque was presented for payment, on 09/06/2017 before the R.M Colony Branch IOB, but that was returned as 'payment stopped by the drawer'. After completing the statutory formalities, he filed the private complaint before the trial court stating that this petitioner has committed the offence under section 138 of the Negotiable Instruments Act.

3. Seeking quashment of the same, this petition has been filed mainly on the ground that the respondent has not stated the correct date of the transaction in the complaint. Another ground is that the respondent has omitted to mention in which transaction, the cause of action has arisen. The place of payment of loan is not mentioned and the respondent is also not known to the petitioner.



4.It is the further ground that the total value of the cheque issued is only having below Rs.5,00,000/-. But the case has been filed for a sum of Rs.7,50,000/-, which is not permissible under law.

5.Heard both sides.

6.It is a transaction out of the loan and subsequently, the alleged issuance of the cheque for the above said loan amount, towards the discharge of the above said loan amount and presentation for payment, dishonoured.

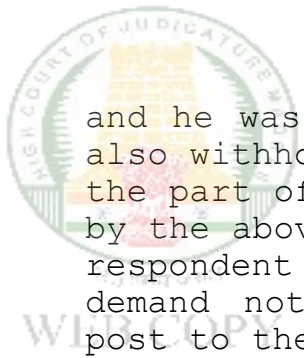
7.The learned counsel appearing for the petitioner would submit that value of the cheque is clearly mentioned in the cheque itself as below Rs.5,00,000/-, but the respondent has filled up the cheque for Rs.7,50,000/- and presented the same for payment. So according to him, the cheque is an un-authorised one and notice was not properly served upon the petitioner.

8.The learned counsel appearing for the petitioner would rely upon the judgment of this court reported in the case of Kishore Vs. Arul Jothi [2017(3) MWN (Cr.) DCC 29 (Mad.)], wherein a similar situation has arisen. The plea was raised in that case is that since notice of demand only will give cause of action for the prosecution. If no notice has been received by the accused, the prosecution itself is not valid under law. It is the specific case of the complainant in the private complaint that he issued notice on 22/06/2017, but it was returned un-served, on 30/06/2017. So according to him, notice was sent to the known address of the petitioner, which is deemed service.

9.The learned counsel appearing for the petitioner would submit that as per the judgment of this court reported in Kishore Vs. Arul Jothi [2017(3)MWN (Cr.) DCC 29 (Mad.)], notice is sent to the wrong address that cannot be termed to be a proper service. So also relied upon the judgment in the case of Sivasakthi Agencies Vs. Ajit Construction [2016(3) MWN (Cr.) DCC 127 (Mad.)]

10.Per contra, the learned counsel appearing for the respondent would submit that whether proper notice has been served upon the petitioner or not, cannot be a matter for consideration by this court.

11.But pointing out this judgment, the learned counsel appearing for the petitioner would submit that notice was not properly sent to the known address of the petitioner. Even though the school address, where she is working has been mentioned, the respondent by influencing the postal department official has got it returned, as if intimation has been delivered to him. Over which also, she sent a complaint to the postal authorities and a criminal case was also initiated against the concerned officer



and he was also imposed a penalty of warning and his increment was also withhold for three years. So no doubt, there is a misconduct on the part of the postal authority, but the mistake that was committed by the above said postal authority should not affect the case of the respondent herein, for which, he is noway responsible. He has sent a demand notice with proper acknowledgement due through registered post to the working address of the petitioner.

12.Perusal of the records further shows that the complaint was filed within a statutory time I.e., in 2017. After receiving the summon only, it appears that the respondent filed a complaint against the postal authority, on 22/12/2018. So it appears that on that date, the petitioner was having knowledge about the demand notice. So she ought to have either received the copy of the demand notice by filing the copy application or memo before the trial court and ought to have responded the same and without following such a course, she immediately filed the quash petition on the ground that departmental action was initiated against the concerned officer. So the failure on the part of the petitioner to take the above said steps dis-entitles her from maintaining this petition.

13.The next ground is that the disputed cheque is valid below Rs.5,00,000/-. Whether it is a valid cheque or not cannot be a matter for consideration in this petition. It is a matter for trial.

14.The petitioner has not denied her signature in the disputed cheque. The cheque book is in the name of the petitioner, which is mentioned in the cheque leaf itself. Similarly the savings bank account maintained by her tallies with that of the account, which is maintained by her in the State Bank of India, Dindigul. So this cannot be a reason for quashment.

15.So for all the reasons, I am of the considered view that in the facts and circumstances of this case, the petitioner has to undergo the trial process before the trial court to its logical end. Whatever may be, she can make all possible defence, that was available to her as per law before the trial court.

16.In the result, this criminal original petition is **dismissed**. However, considering the fact that the petitioner is working as a teacher, her personal appearance is dispensed with before the trial court. Within 15 days from the date of receipt of a copy of this order, the petitioner must appear before the trial court and file an undertaking affidavit that she will appear as and when required by the court and she must ensure that she is properly represented by an Advocate. Further, considering the fact that the matter is of the year 2017 and kept pending for more than five years without any progress, there shall be a direction to the Judicial Magistrate No.1, Dindigul to expedite the trial process and dispose of the case within a period of five months from the date of receipt of a copy of



this order and the compliance report must be submitted to this Registry forthwith. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (RTI)

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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 No.1,
Dindigul.

+1 CC to M/s.V. KARUNA, Advocate (SR-16642[F] dated 05/04/2022)

+1 CC to M/s.I. SALIYAKHAN, Advocate (SR-16517[F] dated
05/04/2022)

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KB(04.05.2022) 4P 4C