



WEB COPY



Crl.O.P.No.5502 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.5502 of 2021

and

Crl.M.P.No.3350 of 2021

S. Jaisankar

...Petitioner

-Vs-

V. Chokkalingam

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the case in C.C.No.144 of 2020 on the file of the Judicial Magistrate, Gudiyattam and to quash the same.

For Petitioner

: Mr. N. Manoharan

For Respondent

: Mr. D. Rajagopal

ORDER

This Criminal Original Petition has been filed seeking to quash the impugned proceedings in C.C.No.144 of 2020 on the file of the Judicial Magistrate, Gudiyattam, filed for the alleged offences under Sections 138 and 142 of Negotiable Instruments Act, 1881 as amended by Act 66 of 1988.

2.It is alleged in the final report that the petitioner had issued a



Crl.O.P.No.5502 of 2021

cheque for a sum of Rs.27,50,000/- towards the discharge of his liability to the complainant; that when the said cheque was presented for collection it was returned with an endorsement 'insufficient funds' and the petitioner had not made payment inspite of the statutory notice.

3.The learned counsel for the petitioner submitted that the impugned complaint is not maintainable since the respondent had presented the cheque earlier on 09.08.2019 and thereafter, issued statutory notice. Realizing that the said notice was defective, he presented the cheque once again on 10.09.2019. The learned counsel submitted that such a procedure adopted by the respondent is not in accordance with law and hence, the complaint is liable to be quashed.

4.The learned counsel for the respondent submitted that the points raised by the petitioner is not sustainable in view of the settled position of law, that the complainant can present the cheque any number of time as long as the cheque is valid. He relied upon the judgment of the Hon'ble Supreme Court in *MSR Leathers V. S. Palaniappan*, reported in (2013) 1 SCC 177.



CrI.O.P.No.5502 of 2021

5. In view of the submissions made by the learned counsel on either side this Court finds that the instant quash petition is liable to be dismissed. The points raised by the learned counsel for the petitioner cannot be sustained in view of the settled position of law. The relevant portion of the judgment in **MSR Leathers V. S. Palaniappan**, reported in **(2013) 1 SCC 177** is extracted hereunder for better understanding:

“33. Applying the above rule of interpretation and the provisions of Section 138, we have no hesitation in holding that a prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based on the first default which was followed by statutory notice and a failure to pay had not been launched. It the entire purpose underlying Section 138 of the Negotiable Instruments Act, is to compel the drawers to honour their commitments made in the course of their business or other affairs, there is no reason why a person who has issued a cheque which is dishonoured and who fails to make payment despite



Crl.O.P.No.5502 of 2021

WEB COPY

statutory notice served upon him should be immune to prosecution simply because the holder of the cheque has not rushed to the Court with a complaint based on such default or simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or for any other similar reason. There is in our opinion no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again gets dishonoured for the second or successive time.”

6.In view of the above, this Criminal Original Petition is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed. It is open to the petitioner to raise all other contentions before the trial Court and the learned Judicial Magistrate, Gudiyattam, may consider the same on its merits, without being influenced by any of the observations made in this order.



Crl.O.P.No.5502 of 2021

7.Since the case is of the year 2020, the learned Magistrate, Gudiyattam, may conduct the trial as expeditiously as possible and preferably complete it within a period of six months from the date of receipt of a copy of this order.

20.06.2023

smv

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

To,

1. Judicial Magistrate, Gudiyattam

2.The Public Prosecutor,
High Court of Madras.

SUNDER MOHAN,J.



WEB COPY



Crl.O.P.No.5502 of 2021

smv

Crl.O.P.No.5502 of 2021

20.06.2023