



Crl.O.P.No.16121 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.16121 of 2023

Walter Morais Jeyakumar

... Petitioner

Vs.

R.Jacobe

... Respondent

Prayer: This Criminal Original Petition is filed under Section 482 Cr.P.C. to direct the Judicial Magistrate II Puducherry to take the complaint dated 28.04.2023 on file as the time frame fixed by this Court.

For Petitioner : Mr.P.Suresh Philemon

For Respondent : No appearance

ORDER

This Criminal original petition has been filed to take the complaint on file and to deal with the same on its own merits and in accordance with law.



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2. The petitioner had filed an earlier complaint in STC No.2392 of 2016 against the respondent for offence under Section 138 of the Negotiable Instruments Act. The said complaint came to be dismissed by an order dated 20.02.2023 on the ground that the complaint was filed even before the expiry of 15 days of the service of notice and hence, cannot be treated as a complaint in the eye of law.

3. The petitioner filed a fresh complaint before the Court below quoting the judgment of the Apex Court in ***Gajanand Buraange Vs.Laxmi Chand Goyal in SLP(Crl).No.1415 of 2019.*** The grievance of the petitioner is that the Court below rejected the complaint on the ground that the earlier complaint in STC No.2392 of 2016 has already been dismissed and a fresh complaint on the same cause of action cannot be entertained. Aggrieved by the same, the present Criminal Original Petition has been filed before this Court.



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4. Heard Mr.P.Suresh Philemon, learned counsel for the petitioner.

5. This Court has carefully gone through the judgement of the Apex Court in ***Gajanand Buraange Vs.Laxmi Chand Goyal*** referred supra. Two issues were dealt with by the Apex Court in the said judgement. The 1st issue is if the complaint is filed before the expiry of 15 days can cognizance of the offence under Section 138 of the Negotiable Instruments Act can be taken. The 2nd issue is that if such cognizance cannot be taken, can the complainant be permitted to present the complaint again.

6. Insofar as the 1st issue is concerned, the Apex Court held that the Court cannot take cognizance of an offence under Section 138 of the Negotiable Instruments Act on a complaint filed before the expiry of 15 days from the date of receipt of the notice by the



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drawer of the cheque. Insofar as the 2nd issue is concerned, the Apex Court held that in all such pending cases, the complainant can be permitted to file a fresh complaint and if it could not be filed within the time prescribed under Section 142(b) of the Act, the complainant can be allowed to seek for the benefit of the proviso to the section by giving sufficient cause.

7. The above judgement will not come to the aid of the petitioner since the complaint has already been dismissed by the Court below by an order dated 20.02.2023. In view of the same, the complainant has to necessarily challenge this order and get a liberty to file a fresh complaint before the Court below. The complainant cannot disregard the order passed by the Court below on 20.02.2023 and parellelly file a fresh complaint. In view of the same, the reason assigned by the Court below for not entertaining the complaint cannot be held to be illegal.



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8. In the light of the above discussion, it is left open to the petitioner to challenge the order passed by the Court below in STC No.2392 of 2016 dated 20.02.2023, by filing an appeal. In the appeal, it is always left open to the petitioner to take advantage of the judgment passed by the Apex Court and canvass the same before the appellate Court.

9. This Criminal original petition is disposed of in the above terms.

19.07.2023

rka

Index :Yes/No

Internet:Yes

Speaking Order/Non-speaking Order

To

1. The learned Judicial Magistrate II Puducherry.

2. The Public Prosecutor,
Madras High Court, Chennai.

N.ANAND VENKATESH,J.

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