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Crl.OP.No.22022 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2023

CORAM:

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

Crl.OP.No.22022 of 2021
and
Crl.MP.No.11948 of 2021

G.Chinnasamy

... Petitioner

Vs.

S.K.N.Jayakumar

... Respondent

PRAYER: Criminal original petition is filed under Section 482 of Cr.P.C. to call for the records in STC.No.69 of 2021 on the file of the Judicial Magistrate, Fast Track Court-I, Erode and to quash the same.

For Petitioner : Mr.S.Thirukkumaran

For Respondent : Mr.S.Lakshmipathy

ORDER

This Criminal Original Petition has been filed to quash the proceedings in STC.No.69 of 2021 on the file of the Judicial Magistrate, Fast Track Court-I, Erode thereby taken cognizance for the offences under Section 138 of Negotiable Instruments Act.



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2. Heard, the learned counsel appearing on either side.

3. The respondent filed complaint for the offence under Section 138 of Negotiable Instruments Act as against the petitioner. The crux of the complaint is that the petitioner borrowed a sum of Rs.9 lakhs and agreed to repay the same with interest at the rate of 2% per hundred rupees. He also issued post dated cheque and assured that the cheque will be honoured on the date of its presentation. Accordingly, the respondent presented the cheque for collection on 01.10.2020 and the same was returned with endorsement 'kindly contact drawer, drawee bank and please present again'. Once again, the cheque was presented for collection and again it was returned for the very same reason on 19.10.2020. Thereafter, the respondent caused legal notice and presented the complaint.

4. Admittedly the cheque was returned for the reason 'kindly contact drawer, drawee bank and please present again'. Therefore, the cheque was not returned dishonoured or for any other reason such as 'funds insufficient', 'signature differs', etc. The banker categorically stated as 'kindly contact drawer, drawee bank and please present again'. There is no evidence to show



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that the respondent contacted the petitioner at any point of time and also approached the banker before re-presentation. It is relevant to extract provision under Section 138 of NI Act hereunder;

138 Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the



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drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

5. Therefore, the endorsement made by the banker cannot be held to be 'dishonour of cheque'. There is no cause of action to lodge complaint for the offence punishable under Section 138 of NI Act. As such, the impugned proceedings cannot be sustained and it is liable to be quashed. Accordingly, the impugned proceedings in STC.No.69 of 2021 on the file of the Judicial Magistrate, Fast Track Court-I, Erode is quashed and this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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To

The Judicial Magistrate,
Fast Track Court-I, Erode



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G.K.ILANTHIRAIYAN, J.

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