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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 23.08.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH**

**Crl.O.P Nos.27744 of 2022 and 27057 of 2022**  
**and Crl.MP.Nos.16634,16635 of 2023, 17048,17049 of 2022**

**Crl.OP No.27744 of 2022**

1.M/s. RNK Fabrics  
Rep by its authorized person S. Radha,  
No.65/1, Pitchampalayam Itteri Road,  
Kumarananthapuram, Tirupur-2.

2.S.Radha

Petitioner

vs.

MKM Heat Setting,  
Rep by its partner:  
B. Chandrasekar,  
S/o. Balasubramaniam,  
Having office at: 3/400, Uthukulli Main Road,  
Mannarai, Tirupur – 641 607.

Respondent

**PRAYER in Crl OP No.27744 of 2022:** Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to STC. No.1519/2022 pending on the file of the Fast Track Judicial Magistrate, Tiruppur and quash the same.

**Crl.OP.No.27057 of 2022**

M/s.Asia Pacific International  
Rep by its authorized partner  
K.Pushpalatha, No.736, PN Road



Tiruppur 2.  
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Petitioner

vs.

MKM Heat Setting,  
Rep by its partner:  
B. Chandrasekar, S/o. Balasubramaniam,  
Having office at: 3/400, Uthukulli Main Road,  
Mannarai, Tirupur – 641 607.

Respondent

**PRAYER in Crl OP No.27057 of 2022 : Criminal Original Petition**  
filed under Section 482 of the Code of Criminal Procedure, to call  
for the records relating to STC. No.1519/2022 pending on the file  
of the Fast Track Judicial Magistrate, Tiruppur and quash the  
same.

For Petitioner : Mr. R. Shivakumar  
in both Crl.OPs  
For Respondent : Mr.N.Arunkumar  
in both Crl OPs for M/s.M.N.Balakrishnan

### **ORDER**

These petitions have been filed to quash the proceedings in  
STC No.1519 of 2022, pending on the file of the Fast Track Judicial  
Magistrate, Thiruppur.

2. The respondent filed a private complaint against the  
petitioners for offence under Section 138 of the Negotiable Instruments  
Act. The main ground that has been taken by the learned counsel for the  
petitioners is that the complaint was filed beyond the period of limitation



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and the Court below has taken cognizance and therefore, the learned counsel sought for quashing of the entire complaint.

3. Heard Mr. R. Shivakumar, learned counsel for the petitioner in both Crl.OPs and Mr.N.Arunkumar, learned counsel for the respondent.

4. It is seen from records that the cheque is dated 27.12.2021 and it was presented for payment on 28.12.2021. The cheque was returned with an endorsement "funds insufficient" on 29.12.2021. Thereafter, the respondent issued a legal notice dated 24.01.2022 to all the three accused persons. A1 and A2 received the notice on 29.01.2022 and whereas, A3 received the notice on 27.01.2022. The complaint came to be filed only on 21.03.2022. The period of limitation comes to an end on 15.03.2022 and therefore, there was a delay of six days in filing the complaint.

5. It is now too well settled that whenever there is a delay in filing the complaint beyond the period prescribed under the Negotiable Instrument Act, a petition to condone the delay must be filed and the accused persons must be put on notice and an order has to be passed and only thereafter, the complaint can be taken cognizance. This



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mandatory procedure has not been followed in this case and therefore, the very taking of cognizance by the Court below suffers from illegality.

6. In the light of the above discussion, the cognizance taken by the Court below in STC No.1519 of 2022 is hereby set aside. The respondent is directed to file a petition to condone the delay in filing the complaint and the Court below shall issue notice to the petitioner and decide the said petition. Depending upon the decision taken by the Court, respondent can proceed further in accordance with law.

7. These Criminal original petitions are allowed in the above terms. It goes without saying that if ultimately the complaint is taken cognizance, the petitioners are at liberty to raise the other grounds which has not been dealt with in these petitions. Consequently, the connected miscellaneous petitions are closed.

**23.08.2023**

Index : Yes/No  
Internet : Yes/No  
Speaking Order/Non-Speaking Order  
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**N. ANAND VENKATESH, J.**

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To

1. Fast Track Judicial Magistrate,  
Tiruppur

2. The Public Prosecutor,  
High Court, Madras

**Crl.O.P Nos.27744 of 2022 and 27057 of 2022**  
**and Crl.MP.Nos.16634,16635 of 2023, 17048,17049 of 2022**

**23.08.2023**