



Crl.O.P.No.29770 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2023

CORAM :

THE HONOURABLE Mr. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.29770 of 2019

and

Crl.M.P.No.16088 of 2019

P.Shanthi

.. Petitioner

Vs.

N.Kalaiyaran

..Respondent

PRAYER : Criminal Original Petition has been filed under sections 482 of Criminal Procedure Code to call for the records pertaining to the proceedings in S.T.C.No.559 of 2019 on the file of the Judicial Magistrate at Paramathi and quash the same.

For Petitioner : Mr.S.Ramajayam

For Respondent : No appearance

ORDER

This Criminal Original Petition to quash the complaint is filed under Section 138 of Negotiable Instruments Act.



CrI.O.P.No.29770 of 2019

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2. It is alleged in the complaint that the petitioner had borrowed a sum of Rs.15,00,000/- and issued a cheque for Rs.15,00,000/-; that when the cheque was presented for collection, it was returned for the reason “Fund Insufficient”. The return memo was issued by the bank on 17.05.2019; that statutory notice was issued on 20.06.2019. In spite of statutory notice, the petitioner did not make any payment.

3. The learned counsel for the petitioner submitted that the complaint is not maintainable, since the statutory notice had not been issued within 30 days from the receipt of intimation from the bank. The learned counsel pointed out to the averments in the complaint, wherein, the complainant had admitted that the return memo was received on 17.05.2019, whereas, the notice was issued on 20.06.2019 and submitted that since the statutory notice is beyond the period of 30 days, the complaint is not maintainable.



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4. Though notice was sent by the defacto complainant and it was returned with endorsement “return to sender”. Hence this Court appointed a legal aid counsel by name Ms.L.Padmavathy. However, there is no representation. The learned counsel for the petitioner submitted that the respondent is aware of the proceedings and in fact the petitioner had filed memo stating about the pendency of the proceedings before the trial Court, but he has not chosen to enter appearance.

5. This Court finds that there is force in the submission of the learned counsel for the petitioner. Admittedly the cheque return memo issued by the bank is dated 17.05.2019 and the notice was issued on 20.06.2019. The averments in the complaint confirm these two dates. Since the notice has not been issued within 30 days as mandated under the Act, the impugned complaint is liable to be quashed. This Court in Crl.O.P.No.30627 of 2015 had considered the same issue and held as follows:-

*“In view of the above position of law
that the notice under Proviso (b) to Section 138
of the Negotiable Instruments Act, 1881 should*



CrI.O.P.No.29770 of 2019

be issued within a period of 30 days and in the instant case had been issued beyond the said period of 30 days, I have no hesitation to hold that the complaint should not have been taken cognizance by the Magistrate”

6. The above observations squarely apply to the facts of this case. Hence, this Criminal Original Petition stands allowed and S.T.C.No.559 of 2019 on the file of the learned Judicial Magistrate, Paramathi, is quashed. Consequently, the connected Criminal Miscellaneous Petition is closed.

30.06.2023

2/2

Internet : Yes/No

Index: Yes/No

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To

1.The Judicial Magistrate, Paramathi.



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CrI.O.P.No.29770 of 2019

SUNDER MOHAN, J.

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CrI.O.P.No.29770 of 2019

30.06.2023

2/2