



Crl.O.P(MD).No.285 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On: 14.03.2023

Delivered On : .2023

CORAM:

THE HONOURABLE MRS. JUSTICE R.THARANI

Crl.O.P(MD).No.285 of 2021

and

Crl.M.P.(MD)Nos.106 and 108 of 2021

R.Saranya

...Petitioner

Vs

A.Amalraj

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records of the impugned proceedings pertaining in S.T.C.No.45 of 2019 on the file of the learned Judicial Magistrate, Vadipatti and quash the same as illegal.

For Petitioner	: Mr.S.M.A.Jinnah
For Respondent	: Mr.R.Velmurugan

ORDER

This petition is filed to quash the proceedings in S.T.C.No.45 of 2019 on the file of the learned Judicial Magistrate, Vadipatti.

2.The allegation against the petitioner is that the petitioner and her husband were friends of the respondent. The respondent is doing business in



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the name and style of 'Ratna Flooring'. The petitioner approached the respondent and demanded Rs.5,00,000/- (Rupees Five Lakhs only) as hand loan. The respondent gave a loan of Rs.5,00,000/- (Rupees Five Lakhs only) on 10.06.2018. The petitioner promised to return the amount within a period of three months. After a lapse of three months, when the respondent approached the petitioner on 15.09.2018, she demanded two months time for repayment and then she issued a cheque for a sum of Rs.5,00,000/- dated 23.11.2018. When the respondent presented the cheque for collection, the same was returned as 'insufficient fund'. The respondent issued a legal notice on 08.12.2018 and then he registered a case against the petitioner in S.T.C.No.45 of 2019.

3.On the side of the petitioner, it is stated that only after the receipt of notice from the trial Court, the petitioner sent a letter to the concerned Police Department and he came to know that instead of waiting for a period of seven days, the Postal Department sent back the cover without giving any intimation to the petitioner. The petitioner did not commit any offence. The case was taken on file only after a lapse of six days. The trial Court is wrong in taking cognizance of the case, after the lapse of the prescribed limitation period. Though the respondent was having sufficient time after the issuance of the return notice, he has not chosen to file a case within the time limit. The



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trial Court is wrong in admitting of the delay excuse petition.

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4.On the side of the petitioner, it is stated that a notice was not given to the petitioner before condoning the delay. In support of this contention, a judgment of this Court in the case of ***Jaya Raghavaa Colour v. Euro Impex and others*** reported in ***2015 SCC Online Mad 1244***, wherein it is stated as follows:

“No medical certificate or document has been filed to substantiate illness. If the reasons adduced, are not substantiated with any valid documents and on the contra, it is found to be false, exercise of discretion by the Court below in dismissing the delay excuse petition, cannot be said to be improper, warranting interference by this Court.”

5.On the side of the respondent, it is stated that the trial Court is having the power to condone the delay. There is no necessity to give notice to the respondent. Notice was sent to the petitioner after the case was taken on file. Under Section 142(b) of Negotiable Instruments Act and under Section 138(c) of Negotiable Instruments Act, the trial Court can take cognizance of the complaint even after the prescribed period, if the complainant satisfy the Court that he had sufficient cause for not making a complaint in time.



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R. THARANI,J.

Mrn

6.It is seen that without giving notice to the petitioner, the matter involved is Rs.5,00,000/- (Rupees Five Lakhs only). The allegation against the petitioner is that he has executed a cheque in favour of the respondent. The genuineness of the claim and validity of the cheque are to be proved before the Court.

7.In the above circumstances, recording of evidence and documents are necessary and a trial is necessary in this case. Hence, this Criminal Original Petition is **dismissed**. Consequently, connected miscellaneous petitions are closed.

.2023

NCC : Yes/No

Internet : Yes/No

Index : Yes/No

Mrn

To

1.The Judicial Magistrate, Vadipatti.

2.The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

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