



CrI.O.P.(MD)No.2275 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2023

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

CrI.O.P.(MD)No.2275 of 2021
and
CrI.M.P.(MD)No.1148 of 2021

Vigneswaran

... Petitioner

Vs.

Alagu Financier Pallathur,
Rep. by its
Power Agent,
Palaniyandi,
S/o.Rengasamy,
D.No.2,Nattar Building Main Road,
Kothari, Pallathur, Karaikudi,
Sivagangai District.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the C.C.No.193 of 2020 on the file of the Fast Track Judge, (Magistrate Level), Karaikudi and quash the same.

For Petitioner : Mr.A.Arun Prasad

For Respondent : Mr.R.J.Karthick



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ORDER

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This Criminal Original Petition has been filed to quash the proceedings in C.C.No.193 of 2020 on the file of the Fast Track Judge, (Magistrate Level), Karaikudi.

2. According to the petitioner, the respondent has filed a cheque complaint alleging that the petitioner borrowed a sum of Rs.1,00,000/- for 12% interest per annum and hypothecated his vehicle, namely, TATA Indica Vista registered in Reg.No.TN-55-Z-4151. After few months the petitioner had paid the loan amount and there was a due Rs.88,000/- and the petitioner has not come forward to settle the said amount. On 12.01.2020 the respondent approached the petitioner and he promised him to repay the amount, within two months and gave a cheque of State Bank of India, Thirumayam Branch for Rs.88,000/- dated 12.03.2020. When the cheque was presented for collection through Indian Bank on 15.03.2020, the same was returned on 16.03.2020 for the reason “insufficient fund”. Thereafter, the cheque was presented on 18.06.2020 before Indian Bank, A.C.Campus, Karaikudi and the same was dishonoured on 19.06.2020. Thereafter, on 15.07.2020, the respondent



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caused Advocate notice and the same was received by the petitioner on 20.07.2020. After receipt of notice, due to failure on the part of the petitioner either to send reply or settle the amount, the present complaint came to be filed. In fact, the cheque was presented after a period of three months, which is against the provisions of Section 138 of the Negotiable Instruments Act. The trial Court has not considered the above said facts and mechanically taken cognizance in C.C.No.193 of 2020. There is no cause of action and the cheque was presented on 18.06.2020 and earlier, the cheque was presented, but failed to take any steps and thereafter, after lapse of statutory period of three months, the cheque was again presented on 15.03.2020. Therefore, the offence under Section 138 NI Act would not attract.

3.No counter was filed by the respondent.

4.The learned counsel appearing for the petitioner would contend that the respondent filed a complaint alleging the petitioner received Rs.1,00,000/- and he paid the amount and there was due of Rs.88,000/-, for which, he issued cheque dated 12.03.2020. When the cheque was presented for collection, it was returned as “insufficient funds” and then, the respondent issued notice and no reply was sent. In fact, the cheque



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was previously presented on 15.03.2020 and the same was returned on 16.03.2020. Thereafter, again the cheque was presented on 18.06.2020, after a lapse of three months. Therefore, under Section 138 of NI Act, it is barred by limitation and the petitioner cannot be prosecuted for the time barred cheque. Hence, pending proceedings in C.C.No.193 of 2020 on the file of the Fast Track Judge, (Magistrate Level), Karaikudi is liable to be quashed.

5.The learned counsel appearing for the respondent would contend that since on the date of presentation, COVID pandemic was in existence and the Hon'ble Supreme Court has extended the limitation period under Section 138 (b)(c) NI Act, the question of limitation would not arise in this case. In support of his contention he produced the judgment of the Hon'ble Supreme Court in suo motu W.P.(C)No.3 of 2020, wherein, the Hon'ble Supreme Court has extended limitation period from 15.03.2020 till 28.02.2022.

6.Heard both sides and perused the materials available in the records.



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7. On perusal of records reveals that the respondent filed cheque complaint before the learned Magistrate and the same was taken cognizance in C.C.No.193 of 2020. According to the petitioner, cheque was presented for collection after lapse of three months. It is seen that the cheque was presented on 15.03.2020 and the same was returned on 16.03.2020. Thereafter, again on 18.06.2020 the cheque was presented and the same was dishonoured on 19.06.2020. Thereafter, the respondent issued notice to the accused on 15.07.2020 by mentioning the earlier date of return as 16.03.2020 and subsequent return date as 19.06.2020. According to petitioner the first date of presentation is 15.03.2020 and the same was returned on 16.03.2020, which is so within 30 days, the notice ought to have been issued. The second date of presentation is on 18.06.2020, which is after a lapse of 90 days, thereby the notice issued on 15.07.2020 for the cheque returned on 19.06.2020 is barred by limitation. Per contra, the respondent's contention is that due to COVID-19 pandemic, the Hon'ble Supreme Court extended the period of limitation from 15.03.2020 to 28.02.2022. As per the judgment, for Section 138(b) (c) of the Negotiable Instruments Act, the limitation period was extended.



8.It is also seen that the Hon'ble Supreme Court also extended time limit for issuing notice under Section 138(b)(c)NI Act in Suo Motu W.P.(C)No.3 of 2020, in which, the Hon'ble Supreme Court held as follows:-

IV.It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996. Section 12A of the Commercial Courts Act, 2015 and provisions (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

In the case on hand, the respondent had issued notice dated 15.07.2020 and the same was received by the petitioner on 20.07.2020. But, no reply was given. Therefore, this Court is of the view that the cheque was presented first time on 15.03.2020, that is within limitation and notice was issued on 15.07.2020, that is after lapse of one month time. The Hon'ble Supreme Court has already extended the time limit for Section 138(b)(c) NI Act. Notice was given under the provisions of Section 138(b)



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of the Negotiable Instruments Act. Therefore, notice was issued within time, for the return dated 16.03.2020, which was within limitation time.

9.In view of the above, the arguments advanced by the learned counsel for the petitioner cannot be accepted and there is no ground to to quash the proceedings. The petitioner can very well raise all the grounds, which are raised in this petition, before the trial Court as defence. This petition has no merits and deserves dismissal. Accordingly, this criminal original petition is **dismissed**. However, the learned Fast Track Judge, (Magistrate Level), Karaikudi is directed to complete the trial in C.C.No.193 of 2020, as early as possible, preferably, within a period of four months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

27.09.2023

NCC	:	Yes / No
Index	:	Yes / No
Internet	:	Yes / No
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To

The Fast Track Judge, (Magistrate Level),
Karaikudi.



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P. DHANABAL,J.

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