



Crl.O.P.(MD)No.6946 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.09.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.6946 of 2023

and

Crl.M.P.(MD) No.6019 of 2023

M.Prabakaran

... Petitioner

Vs.

K.Sekar

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the petitioner in the private complaint in S.T.C.No.644 of 2022 on the file of the Judicial Magistrate Court, Melur, Madurai District and quash the same as illegal.

For Petitioner : Mr.R.Udhayakumar

For Respondent : Mr.S.Raja Mohamed
for M/s.Mohammed Associates

ORDER

This Criminal Original Petition is filed seeking quashment of S.T.C.No.644 of 2022 under Sections 138(c) and 142(B) of the Negotiable Instruments Act, 1881 (in short "the Act").



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2. According to the petitioner, he has borrowed Rs.11 lakhs from one Jeyapaul of S.S.B.Builders, agreeing to repay the said amount with the interest at the rate of two percent. At the time of advancing the money, as security the said Jeyapaul has received registered documents bearing Nos.964803, 96404, 964807, five empty cheque slips and promissory notes. The petitioner has also borrowed Rs.11 lakhs from the said Jeyapaul in the month of June 2022 and at the time of borrowing the second loan, the said Jeyapaul has added Rs.1 lakh towards interest and thereby asked the petitioner to pay interest for Rs.12 lakhs at the rate of two percent and that the petitioner has handed over him three more registered documents as a security. The petitioner has in all received Rs. 23 lakhs from Jeyapaul and has paid Rs.1,72,000/- towards interest.

3. According to the petitioner, he has repaid an amount of Rs.12 lakhs out of Rs.23 lakhs to Jeyapaul on 20.09.2021 and was ready to pay the balance amount, however, the respondent has refused to return the registered documents and the cheque slips given by the petitioner as a security. The petitioner has made a complaint before the Home Secretary,



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Director General of Police and other police officials on 19.07.2022. The petitioner has also filed Crl.O.P.(MD) No.14043 of 2022, wherein this Court directed the police to consider the representation of the petitioner dated 19.07.2022 within a period of four weeks.

4. It is submitted by the petitioner that the respondent is a 'Benami' of Jeyapaul with whom the petitioner has borrowed money and there is no relationship between the petitioner and the respondent and, Jeyapaul has filed a false case thereby respondent/complainant with the cheque slips which were given by him to Jeyapaul. It is also submitted that the respondent/complainant has suppressed the facts about monetary transactions between the petitioner and Jeyapaul.

5. Learned counsel for the respondent/complainant filed a detailed counter-affidavit stating that the petitioner/accused had handed over a cheque for Rs. 9,00,000/- to respondent and same was present with the bank which was dishonored on 08/07/2022, then a demand notice was sent on 09/07/2022, which was received by the petitioner /accused on 11/07/2022 and the petitioner has not paid the amount under the cheque.



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The petitioner/accused has lodged a complaint against one Jeyapaul and he is not aware about the transaction between the petitioner/ accused and Jeyapaul. It is also further stated that S.T.C. No. 644/2022 on the file of the Judicial Magistrate Court, Melur, now is posted for trial on 23.08.2023 and purposely to pro-tract the trial before the lower Court this petition is filed.

6. Heard both sides and perused the record.

7. The petitioner is seeking the quashment of the complaint given by the respondent/complainant under Sections 138(c) and 142(B) of the Act, on the ground that the petitioner is no way connected to the respondent/complainant, who is one of the benami of Jeyapaul with whom the petitioner has made monetary transactions and the blank cheque slips given by the petitioner to the said Jeyapaul were allegedly misused and got filed the complaint against the petitioner under Sections 138(c) and 142(B) of the Act through the respondent/complainant.



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8. The petitioner is not disputing the cheque and his signature on the cheque filed by the respondent/complainant along with complaint. Once there is no dispute with the cheque and his signatures on it, the presumption under Section 139 of the Act will have to be raised against the petitioner thereby it is to be presumed that the cheque was given by the petitioner to the respondent/complainant for legally enforceable debt. However, the petitioner being an accused will have a right to rebut the same and prove that cheque was not given for discharging of legally enforceable debt.

9. In order to rebut the said presumption, the petitioner/accused is expected to prove that he has borrowed Rs.22 lakhs from Jeyapaul under two installments with the interest at the rate of two percent and that at the time of advancing of money, the petitioner has given five registered documents and five cheque slips as a security to Jeyapaul and that those cheque slips have been misused by Jeyapaul and got filed false complaint. In order to prove the same, the petitioner is expected to examine all the persons connected to the transactions and file all the documents. Unless full-fledged trial is conducted, the contentions raised



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by the petitioner cannot be accepted therefore, on this count the STC cannot be quashed.

10. The other contentions raised by the petitioner is that the complaint is filed within fifteen days of receipt of legal notice. According to the petitioner, legal notice was issued on 09.07.2022 to the petitioner and that the petitioner has admittedly received on 11.07.2022 and complaint was filed before learned Magistrate on 25.07.2022.

11. According to the petitioner/accused, the cognizance should not have been taken as the complaint filed against him is prior to the expiry of 15 days from the date of receipt of the statutory legal notice.

12. Section 142 of Negotiable Instruments Act, 1881, runs as under:-

“[(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),
(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;



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(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.].

[(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,--

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.”

As per Section 142(1)(b) of the Act, unless complaint is made within one month of the date of which cause of action arises under clause (c), the cognizance shall not be taken.



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13. Section 138 of the Act runs as under:-

“[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 provision 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 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.”

As per Section 138(b) of the Act, the payer or holder of cheque i.e. The respondent/complainant shall make a demand to the petitioner/accused for payment of the amount regarding the dishonour of cheque by giving notice in writing and within 30 days of the receipt of information by him if the cheque is unpaid then complaint can be filed.

14. That means, the offence under Section 138 of the Act is committed only if the accused has not paid the money under the cheque within 30 days from the date of cause of action. Cause of action arises as per Section 138(c) of the Act if the drawer of cheque fails to make payment within 15 days of the notice, that means, once a cheque has been dishonored, the complainant is expected to inform the same to the drawer of the cheque and shall wait for a period of 15 days from the date of giving of information to the drawer of cheque to see whether the drawer of the cheque or holder of the cheque pays the money back to the complainant of within 15 days from the date of receipt of notice the



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drawer of cheque fails to pay money then cause of action arises for the complainant and runs for a period of 30 days for filing of complaint. That means the offence is committed only after 15 days of receipt of notice of dishonor by the accused. Until then, no cause of action arises for the complainant thereby offence under Section 138 of the Act will not get attract.

15. In the case on hand, as per the contents of the complainant, the petitioner has issued a cheque for Rs.9 lakhs vide cheque dated 13.06.2022, the said cheque was presented for collection in the bank on 13.06.2022 and was returned on 08.07.2022 to the respondent complainant with an endorsement “Funds Insufficient”. The respondent/complainant aggrieved by the dishonour of cheque has issued legal notice dated 09.07.2022. The said notice was admittedly served on 11.07.2022. Therefore, from the date of serving of notice on the petitioner/accused on 11.07.2022, the respondent/complainant shall give 15 clear days to see if the petitioner/accused would pay the money under the dishonoured cheque and within 15 days if he fails to return the money then the respondent/complainant is at liberty to file complaint



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within 30 days thereafter.

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16. In case if within 15 days from the date of serving if the accused given a reply denying the request of the petitioner then cause of action arises from the date of receiving the reply notice even if 15 days have not been expired and then the complainant is at liberty to file complaint within 30 days thereafter. Here is the case that on 11.07.2022 the petitioner has received legal notice therefore the respondent/complainant shall wait until 26.07.2022 to see whether the petitioner pays the money back otherwise he is at liberty to filed complaint on 27.07.2022. However, admittedly complaint was filed on 22.07.2022. As per the copy of the complaint admittedly the complaint was presented by the complainant before the Judicial Magistrate Court, Melur on 25.07.2022. Therefore, the complaint filed even prior commission of offence.

17. In a similar case in ***Gajanand Burange v. Laxmi Chand Goyal*** reported in ***2022 LiveLaw (SC) 682*** the Hon'ble Apex Court held as under:-

"5 The issue which is raised in this appeal is no longer res integra and is covered by a three-Judge bench



decision of this Court in Yogendra Pratap Singh v Savitri Pandey and Another. Two issues were formulated for decision before the three-Judge Bench, which were:

“1.1. (i) Can cognizance of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 be taken on the basis of a complaint filed before the expiry of the period of 15 days stipulated in the notice required to be served upon the drawer of the cheque in terms of Section 138(c) of the Act aforementioned? And,

1.2. (ii) If answer to Question 1 is in the negative, can the complainant be permitted to present the complaint again notwithstanding the fact that the period of one month stipulated under Section 142(b) for the filing of such a complaint has expired?”

6 The first issue was resolved by paragraph 35 of the judgment, which is extracted below:

“35. Can an offence under Section 138 of the NI Act be said to have been committed when the period provided in clause (c) of the proviso has not expired? Section 2(d) of the Code defines “complaint”. According to this definition, complaint means any allegation made orally or in writing to a Magistrate with a view to taking his action against a person who has committed an offence. Commission of an offence is a sine qua non for filing a complaint and for taking cognizance of such offence. A bare reading of the provision contained in clause (c) of the proviso makes it



clear that no complaint can be filed for an offence under Section 138 of the NI Act unless the period of 15 days has elapsed. Any complaint filed before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint at all in the eye of the law. It is not the question of prematurity of the complaint where it is filed before the expiry of 15 days from the date on which notice has been served on him, it is no complaint at all under law. As a matter of fact, Section 142 of the NI Act, inter alia, creates a legal bar on the court from taking cognizance of an offence under Section 138 except upon a written complaint. Since a complaint filed under Section 138 of the NI Act before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint in the eye of the law, obviously, no cognizance of an offence can be taken on the basis of such complaint. Merely because at the time of taking cognizance by the court, the period of 15 days has expired from the date on which notice has been served on the drawer/accused, the court is not clothed with the jurisdiction to take cognizance of an offence under Section 138 on a complaint filed before the expiry of 15 days from the date of receipt of notice by the drawer of the cheque.”

7 In the present case, while the notice was received by the appellant on 8 November 2005, the complaint was filed before the period of fifteen days was complete. The complaint could have been filed only after 23 November



2005, but was filed on 22 November 2005. In view of the legal bar which is created by Section 142 of the NI Act, as explained in the three-Judge Bench decision of this Court, taking of cognizance by the Court was contrary to the law and the complaint was not maintainable before the expiry of the period of fifteen days from the date of its receipt by the appellant.

8 However, on behalf of the respondent, it has been urged that the second issue which was raised before the three-Judge Bench has been dealt with in the following terms:

“41... Now, since our answer to Question (i) is in the negative, we observe that the payee or the holder in due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the NI Act. This direction shall be deemed to be applicable to all such pending cases where the complaint does not proceed further in view of our answer to Question (i). As we have already held that a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section



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142(b), his recourse is to seek the benefit of the proviso, satisfying the court of sufficient cause. Question (ii) is answered accordingly.”

9 We are of the view that the respondent would be entitled to the benefit of the determination on the second issue, as extracted above. 10 Hence, the following order:

(i) The impugned judgment and order of the Single Judge of the High Court of Chhattisgarh dated 28 November 2018 shall stand set aside; and

(ii) The respondent would be at liberty to institute a fresh complaint and since the earlier complaint could not be presented within the time prescribed by Section 142(b) of the NI Act, the respondent would be at liberty to seek the benefit of the proviso by satisfying the trial court of sufficient cause for the delay in instituting the complaint."

18. In the case on hand also the complaint filed by the respondent complainant before expiry of 15 days period is not maintainable. Accordingly, complaint in S.T.C.No.644 of 2022 required to be quashed. However, as held by the Hon'ble Apex Court in ***Gajanand Burange*** (supra), the complainant is at liberty to file fresh complaint as the earlier complaint could not be presented before the time prescribed under Section 140(2)(b) of the Act and that the respondent is at liberty to seek benefit of the provisions in respect of delay.



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19. Accordingly, the complaint in S.T.C.No.644 of 2022 pending on the file of the Judicial Magistrate Court, Melur, Madurai District, is quashed and the complainant is at liberty to file fresh complaint as per the law laid down in ***Gajanand Burange***. Consequently, the connected miscellaneous petition is closed.

25.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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- To
1. The Judicial Magistrate Court, Melur,
Madurai District.
 2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

PKN

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Dated: 25.09.2023