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CRL.OP.(MD)No.16331 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.11.2022

DELIVERED ON : 11.08.2023

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.OP.(MD)No.16331 of 2022

and

CRL.MP(MD).Nos.10843 and 10844 of 2022

Karthika

: Petitioner/Accused

Vs.

Anuradha

: Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records pertaining to the case in S.T.C.No.737 of 2022 pending on the file of the learned Judicial Magistrate, Paramakudi, Ramanathapuram District and quash the same as against the Petitioner.

For Petitioner

: Mr.R.Anand

For Respondent

: Mr.A.Arputharaj

ORDER

This Criminal Original Petition had been filed to quash the Complaint in S.T.C.No.737 of 2022 pending on the file of the learned Judicial Magistrate, Paramakudi, Ramanathapuram District and quash the same as against the Petitioner.



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2. It is the submission of the learned Counsel for the Petitioner that the Petitioner herein is the sole Accused. The Petitioner is alleged to have borrowed money from the Respondent on 24.07.2021 and has issued a cheque to her on 20.06.2022. The cheque was presented for collection by the Respondent on the same day, but the same was returned as "insufficient funds" on 21.06.2022. The Respondent has issued legal notice on 09.07.2022. Since 10.07.2022 was Sunday, the notice was returned unserved to the Respondent's office on 12.07.2022. From 12.07.2022 before expiry of 15 days, the Respondent has filed a complaint on 26.07.2022.

3. The learned Counsel for the Petitioner relied upon the Ruling of the Hon'ble Supreme Court of India reported in **(2014) 10 SCC 713** in the case of **Yogendra Pratap Singh Vs. Savitri Pandey and Another** wherein it has been observed as under:

“A. Debt, Financial and Monetary Laws - Negotiable Instruments Act, 1881 - S. 138 proviso (c) and S. 142(b) - Dishonour of cheque - Complaint in respect of - Maintainability of - Offence under S. 138 - When complete - No complaint can be maintained against drawer of the cheque before the expiry of 15 days from date of receipt of notice under S. 138 proviso (c) because the drawer/accused cannot be said to have committed any offence until then nor is there any accrual of cause of action for filing of complaint under S. 138 of the NI Act until then - Any complaint filed before expiry of the said 15 days is non est - Hence, no cognizance of an offence can be taken on basis of such non est complaint - Thus, if a complaint has been filed before the expiry of the said 15 days, it being no complaint at all in the eye of the law, it is not open to the



court to take cognizance of such a non est complaint merely because on the date of consideration or taking cognizance thereof a period of 15 days from the date on which the notice has been served on the drawer/accused has elapsed - The only remedy for the complainant is to file a fresh complaint which satisfies all the five essential features of S. 138 of the NI Act - Complainant is not permitted to present the very same said non est complaint at any later stage - In all pending cases where the complaint cannot proceed further in terms of the present judgment, 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 S. 142 clause (b) of the NI Act.

4. Also relied upon subsequent ruling of the Hon'ble Supreme Court of India reported in **2022 Live Law (SC) 682 [Gajanand Burange vs Laxmi Chand Goyal]** based on the earlier Full Bench decision. The relevant portion is extracted as under:

“Negotiable Instruments Act, 1881; Section 138 - 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 142(b), his recourse is to seek the benefit of the proviso, satisfying the court of sufficient cause - Referred to Yogendra Pratap Singh vs Savitri Pandey (2014) 10 SCC 713. (Para 5-9)”

5.As per the reported decisions referred to above, the complaint is not maintainable, as the cause of action arose only on the date of receipt of notice and after expiry of 15 days from the receipt of notice. Here, the Respondent had filed the complaint before expiry of 15 days. Therefore,



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the learned Counsel for the Petitioner seeks to quash the complaint in S.T.C.No.737 of 2022 pending on the file of the learned Judicial Magistrate, Paramakudi, Ramanathapuram District

6. The learned Counsel for the Respondent vehemently objected to the submission of the learned Counsel for the Petitioner stating that the Respondent as Complainant before the learned Judicial Magistrate, Paramakudi in S.T.C.No.737 of 2022 had issued notice regarding the bouncing of cheque. The Accused instead of receiving the notice, had evaded due notice and returned the same as unserved to the office of the learned Counsel for the Respondent. The Accused is aware that the cheque issued by her had bounced and she is aware of the fact that the Complainant will issue notice calling upon her to settle the dues she had wantonly evaded. Therefore, there was no option than to lodge the complaint. Now after receipt of summons from the Court, she has approached the Court only to defeat the legal claim of the Complainant. This Petition has no merit and is to be dismissed.

7. On perusal of the complaint filed by the Respondent, it is found that notice issued to the Petitioner by the Respondent was returned



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unserved with an endorsement “left”. Therefore, the contention of the learned Counsel for the Petitioner that the cause of action arose only if the notice was served and there is sufficient chance given to the Accused either to settle the amount mentioned in the cheque or send a reply. Only after that the cause of action will arise, is found unacceptable in the facts of this case, still the Respondent as Complainant should have waited for 15 days before filing of the complaint. Since the Accused has returned the notice, the Postal Department had returned the notice with an endorsement “left” and the complainant had preferred the complaint.

8.In the light of the reported ruling cited by the learned Counsel for the Petitioner in *(2014) 10 SCC 713* in the case of *Yogendra Pratap Singh Vs. Savitri Pandey and Another* and *2022 Live Law (SC) 682 [Gajanand Burange vs Laxmi Chand Goyal]*, the present Complaint is to be quashed.

In the result, **this Criminal Original Petition is allowed.**

The complaint in S.T.C.No.737 of 2022 pending on the file of the learned Judicial Magistrate, Paramakudi, Ramanathapuram District is quashed. The Respondent is at liberty to file a fresh complaint on the same



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cause of action. The learned Judicial Magistrate, Paramakudi, Ramanathapuram District is directed to consider the fresh complaint on the same cause of action, if it is filed after issuing statutory notice and waiting for 15 days for the response of the Petitioner/Accused. Only after such time the complaint filed afresh by the Respondent is maintainable. Consequently, the connected miscellaneous petitions are closed.

11.08.2023

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order
srm



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To
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The Judicial Magistrate,
Paramakudi,
Ramanathapuram District



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in

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11.08.2023