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Crl.O.P.No.8275 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.04.2024

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.8275 of 2024
& Crl.M.P.Nos.6068 & 6070 of 2024

M/s.Kanthimathi Enterprises,
A Sole Proprietary firm,
Represented by its sole Proprietrix,
Mrs.Gandhimathi,
No.52 and 53, Prince Towers,
9th Floor, College Road,
Nungampakkam, Chennai

... Petitioner/sole Accused

/versus/

Mr.Surendrakumar Chordia & Sons,
A HUF represented by Itas Karta,
Surendrakumar Chodia,
No.23, General Muthiya Mudali Street,
Sowcarpet, Chennai.

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records in connection with the S.T.C.No.115 of 2024 on the file of the Fast Track Court No.III, Metropolitan Magistrate, George Town, Chennai and quash the criminal proceeding pending on the file of the Fast Track Court No.III, Metropolitan Magistrate, George Town, Chennai in S.T.C.No.115 of 2024.



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For Petitioner : Mr.V.Paarthiban

ORDER

The Criminal Original Petition is filed to quash the private complaint proceedings initiated for offence under Section 138 of N.I Act.

2. The Learned Counsel appearing for the petitioner submitted three points to quash the complaint.

(i). The complaint is filed beyond the time prescribed under the N.I Act.

(ii). The complaint been filed against the Proprietary concern and not against the Proprietor, who is the signatory of the cheque.

(iii). The complaint filed after knowing that the account was closed as per the intimation given by the Bank *vide* memo dated 26.06.2018.



3. The Learned Counsel appearing for the petitioner would submit

that as per the complaint, the cheque dated 17.05.2018, for a sum of Rs.4,00,000/- alleged to have been given to discharge the loan availed by cash on 30.10.2012. Obviously, it is time barred debt and thereafter, the complaint also proceed to say that the cheque was presented at Indian Bank, Sowcarpet Branch on 18.06.2018 and the same was returned *vide* a memo dated 26.06.2018 with an endorsement “Account closed.” Whereas, the statutory notice was issued only on 08.09.2018 beyond the period of 30 days which is mandated under the Act and even that notice was not served on the accused properly and the notice was returned unserved with an endorsement “left”. With all this infirmity, the complaint was filed, the trial Court without applying the mind has taken the complaint on file and issued process.

4. Further, the Learned Counsel for the petitioner would also submit that the cheque which was presented on 18.06.2018, after it got returned, it was represented on 07.08.2018 at Indian Bank, Sowcarpet Branch, Chennai. These facts does not form part of the sworn statement recorded by the Magistrate before taking cognizance.



5. This Court given anxious consideration to the above submission.

The First ground raised by the petitioner is that the complaint not been lodged against the proper person. The complaint describes the accused as M/s.Kanthimadhi Enterprises, A sole Proprietary concern represented by its sole Proprietrix Mrs.Kandhimathi. The cheque dated 17.05.2018 is drawn by M/s.Kanthimadhi Enterprises, Proprietor and Mrs.Kanthimadhi has signed for the said Proprietary concern. The cheque is drawn in favour of Mr.Surendra Kumar Chordia & Sons, who is the complainant.

6. The Learned Counsel appearing for the petitioner relying upon the judgment of this Court in *Anas Industries, Chennai-97, Rep. by its Proprietor S.Ram Mohan -vs- Sri Suresh Bafna, Prop.Mansi Mercantile Company Rep. by its Power of Attorney Holder Sri Kantilal S.Dave* reported in *1999(1)MWN(Cr.)296(Mad)*, submitted that when a proprietorship concern is not a juridical body, it cannot be represented by its proprietor, Proprietorship concern cannot be attributed with any *mens rea*, when it is not a juridical person. Therefore, proceedings launched against the proprietorship concern represented by its Proprietor is liable to be quashed. This is very old Law which has gone a sea



change after several pronouncements of large Bench of several High Courts and

Hon'ble Supreme Court.

7. No doubt, unlike a Company which is presently a juridical body, a Proprietary concern is not a juristic person, it cannot be prosecuted and somebody must represent the proprietorship concern.

8. It is a case where the cheque was drawn from the account of M/s.Kanthimadhi Enterprises which is a Proprietary concern. The signatory is the proprietor of the said concern and therefore, the description of the accused as found in the cheque which is not the subject matter of the criminal prosecution. Therefore, there cannot be any illegality and error which will vitiate the criminal prosecution.

9. The second point raised by the Learned counsel for the petitioner is that the complaint not filed within the time prescribed under the statute. According to the Learned Counsel for the petitioner within one month of the intimation from the Bank about the dishonour of the cheque, statutory notice ought



to have been given providing 15 days time to the accused to pay the cheque amount and only thereafter, the cause of action to initiate proceedings under Section 138 of N.I Act will arise. As far as this case is concerned, admittedly the cheque was presented on 18.06.2018 returned with memo dated 26.06.2018 and therefore, from that date onwards within 30 days statutory notice ought to have been issued. Whereas, in this case statutory notice was issued only on 08.09.2018 which is beyond the period of 30 days and therefore, the complaint is liable to be quashed. In addition, the Learned Counsel for the petitioner also stated that even that notice was not received and returned. Since the statutory notice was not duly served, he had no opportunity to reply. In this regard, in paragraph No.9 of the complaint, the complainant has extracted the relevant particulars regarding the cheque, date, presentation date, date of return memo and date of statutory notice. From this particulars mentioned in the complaint, Court finds that there was another representation of the cheque on 07.08.2018 and it was returned with memo dated 23.08.2018 for which statutory notice was issued on 08.09.2018. From the averment in the complaint, we find that there is only one statutory notice i.e., dated 08.09.2018 but there were two presentation of the cheque. For the Second presentation and return, the complainant has caused statutory notice is well within



the period of 30 days from the date of return. Therefore, the second ground is also not sustainable.

10. Further, the Learned Counsel for the petitioner would submit that the notice was not duly served to him and therefore, the opportunity of replying to the notice being deprived. No doubt, the statutory notice not served on the accused, since he has left the place and the cover returned with postal endorsement “left” been relied by the complainant. It is not the fault of the complainant since he has taken the effort of serving the statutory notice to the accused to the last known address, when she has left the premises, it cannot be construed as failure to cause statutory notice.

11. Yet another plea raised by the petitioner is that the trial Court ought to have been looked into the informations provided in the sworn statement and not the complaint before taking complaint on file. This point is also required to be examined only in the trial but not in a petition under Section 482 of Cr.P.C. Unless and until, there is irregularity which will vitiates the trial as contemplated under the Code, the complaint which is now taken on file cannot be quashed under



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Section 482 of Cr.P.C. All these points which has been now raised by the petitioner is reserved for him to agitate before the trial Court.

12. With the above observation, this ***Criminal Original Petition is dismissed*** . Consequently, connected Miscellaneous Petitions are closed.

05.04.2024

Index :Yes/No.
Internet :Yes/No.
Speaking Order/Non-Speaking Order
bsm.

Copy to:-

1. The Fast Track Court No.III, Metropolitan Magistrate, George Town, Chennai.



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Dr.G.JAYACHANDRAN,J.

bsm

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