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CrI.O.P.No.8478 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.8478 of 2024
& CrI.M.P.Nos.6191 & 6192 of 2024

Dr.A.Asif Baig.

... Petitioner/Accused

Vs.

Mr. H.E.Abdul Azeez M/A 72 Years
S/o. Hajee Ibrahim, No.65, AI Block, 5th Street,
Shanthi Colony,
Anna Nagar, Chennai - 600 040
Represented by his General Power of Attorney
Mr.Thameemul Ibrahim M/A 51 Years
S/o. Peer Mohammed,
Door No.49/7, Bajanai Kovil Main Street,
Villivakkam,
Chennai - 600 049.

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records in S.T.C.No.2278 of 2021, now pending on the file of the XXV Metropolitan Magistrate Court Egmore, Chennai.

For Petitioner : Ms.Harsha Vardhini

For Respondents : Mr.Abudukuman Rajarathnam,
for Mr.Shankar



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ORDER

This Criminal Original Petition is filed to quash the criminal complaint in S.T.C.No.2278 of 2021 taken cognizance by the XXV Metropolitan Magistrate, Egmore.

2. The petitioner herein is the accused. The Learned Counsel for the petitioner submits that the complaint was filed beyond the period of limitation without statutory notice to the accused. The trial Court has condoned the delay. Furthermore, the original cheque even according to the complainant not filed and alleged to have been lost. In the said circumstances, the complaint cannot sustain.

3. The Learned Counsel appearing for the defacto complainant submits that the cheque dated 31.12.2019 was presented for collection and after receiving the cheque back with memo 'insufficient fund', the complaint was prepared and filed. Since it was Covid-19 pandemic period and restrictions for functioning of the Court and movement, there was delay of two days in filing the complaint. In this connection, notice was issued to the accused in the application to condone the delay and only after consent and endorsement made



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by the Learned Counsel for the accused, the delay of two days was condoned and the complaint was taken on file after a specific disclosure of the original cheque lost in transit and thereafter, case was filed and pending.

4. The trial Court before considering the said fact has taken cognizance in view of the fact that the cheque issued by the accused dishonoured on its presentation for collection. The subsequent dishonouring of the cheque were not at all in dispute and in fact during the questioning, the accused has admitted the signature in the cheque and only thereafter the trial Court has proceeded further.

5. The Learned Counsel for the respondent submits that the factum of issuance of cheque will be established by the complainant by letting in other witnesses would speak about the presentation of the cheque and its dishonour.

6. The Learned Counsel for the complainant submits that the point canvassed by the petitioner herein are untenable, in the light of the order passed by the Hon'ble Supreme Court in Suo Moto W.P.(C).No.2 of 2022, wherein moratorium was issued for limitation in case of complaint filed under Section 138 of N.I Act.



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7. On cumulative consideration of the rival submission, this Court holds that the delay in filing the complaint been condoned by judicial order and the same is not challenged. Non-production of the original cheque been explained by the complainant and the Court has taken note of the said explanation and admitted the complaint by taking cognizance. It is the burden of the complainant to prove the transaction through other mode. Non-production of original cheque *per se* will not be fatal to the case of the complainant. It is for the complainant to prove the transaction pertaining to the subject cheque through appropriate evidence and prove his case. The non-production of the original cheque which has been lost cannot be a reason to quash the complaint.

8. With this observation, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed.

11.09.2024

Index : Yes/No
Neutral Citation : Yes/No
bsm



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To

1. The XXV Metropolitan Magistrate Court Egmore, Chennai.

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Dr.G.JAYACHANDRAN,J.

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