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Crl.O.P.No.983



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

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THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.9835 of 2023

1. M.Devaki

2. M.Devaki

... Petitioners

Vs.

S.Krishna Kumar

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, calling for the records and quash the complaint in STC.No.2257 of 2023 on the file of the learned Fast Track Court-I, Metropolitan Magistrate, Egmore at Allikulam, Chennai.

For Petitioners

: Mr.Velu Srinivasan

For Respondent

: Mr.S.Marimuthu

ORDER

This quash petition has been filed to quash the proceedings in STC.No.2257 of 2023 pending on the file of the learned Fast Track Court-I, Metropolitan Magistrate, Egmore at Allikulam, Chennai.

2. The respondent / complainant has filed a private complaint against the



petitioner for offence under Section 138 of the Negotiable Instrument Act on the ground that the petitioner approached the respondent and sought for personal loan.

By virtue of this transaction the petitioner was due and payable a sum of Rs.7,08,500/-. Towards this liability, the petitioner issued a cheque in favour of the respondent. When this cheque was presented for collection, it was dishonoured with an endorsement “funds insufficient”. After issuance of statutory notice, a private complaint came to be filed before the Court below against the petitioner.

3. Heard Mr.Velu Srinivasan, learned counsel for the petitioner and Mr.S.Marimuthu, learned counsel for the respondent.

4. The main ground that was urged by the learned counsel for the petitioner is that the complaint itself is pre-mature since the respondent / complainant has not even waited for the statutory period of 15 days before filing the complaint. It was further contended that the petitioner had also issued a reply notice dated 02.11.2022 refuting the liability and this reply notice was conveniently not filed before the court below. According to the petitioner, the petitioner was only due and payable a sum of Rs.1,19,000/- and whereas the cheque was deposited by the respondent / complainant for a sum of Rs.7,08,500/-. On these grounds the learned counsel sought for quashing



of the private complaint filed by the respondent.

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5. The learned counsel for the respondent submitted that since the complaint has been filed within the statutory period of 15 days, liberty must be granted to the petitioner to file a fresh complaint before the Court below.

6. In the instant case, the cheque was deposited on 10.10.2022. It was dishonoured on 13.10.2022. The statutory notice was issued to the petitioner dated 15.10.2022 and it was received by the petitioner on 17.10.2022. However, the complaint has been filed by the respondent / complainant on 28.10.2022. It is quite clear that the complaint has been filed even before the expiry of the statutory period of 15 days.

7. The law in this issue is now too well settled and useful reference can be made to the judgment of the Apex Court in the case of **Yogendra Pratap Singh -vs- Savitri Pandey and another** reported in (2014) 3 MWN (CrI.) DCC 65. Reference can also be made to the judgment of the Apex Court in the case of **Gajanand Burange -vs- Laxmi Chand Goyal** in Special Leave to Appeal (CrI.) No. 1299 of 2022 dated 12.08.2022.



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8. In the above judgment, the Apex Court has held that such complaint filed even before the expiry of the period of 15 days stipulated in the notice is unsustainable. However, it has been clarified that the complainant can be given liberty to institute fresh complaint.

9. In the light of the above judgment, the proceedings in STC.No.2257 of 2023 on the file of the learned Fast Track Court-I, Metropolitan Magistrate, Egmore at Allikulam, Chennai is *non est* in the eye of law and the same is hereby quashed. It will be left open to the respondent to institute a fresh complaint along with a petition to condone the delay in instituting the complaint. This complaint shall be filed within a period of 30 days from the date of receipt of a copy of this order. While filing the fresh complaint, the respondent has to necessarily file the reply notice dated 02.11.2022 that was received from petitioner in order to enable the Court to apply its mind on the reply notice.

10. In the result, this Criminal Original Petition is allowed with the above directions.



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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

Note: Issue order copy by 18.01.2024

To

The Public Prosecutor,
Madras High Court,
Chennai.



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Crl.O.P.No.985



N. ANAND VENKATESH, J.

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