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Crl.O.P.No.13448 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.13448 of 2023

P.Kannan

... Petitioner

Vs.

P.Rajendran

... Respondent

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to call for the records and quash the entire proceedings in S.T.C.No.107 of 2022 on the file of Judicial Magistrate No.II, Vridhachalam.

For Petitioner : M/s.R.Sethuvarayar
For Respondent : No Appearance

O R D E R

1.This petition has been filed to quash the proceedings pending in S.T.C.No.107 of 2022 on the file of the Judicial Magistrate No.II, Vridhachalam.

2.When the matter came up for hearing on 20.06.2023, this Court passed the following order:

"This petition is filed to call for the



records and quash the entire proceedings in S.T.C.No.107 of 2022 on the file of learned Judicial Magistrate No.II, Vridhachalam.

2.The learned counsel for the petitioner submitted that respondent filed complaint under Section 138 of Negotiable Instruments Act, for dishonour of cheque. The complaint is challenged on the following grounds:-

i)The statutory notice was not given within period of thirty days from the date of receipt of information from the Bank about the dishonour of cheque.

ii)The complaint ought to have been filed within a period of fifteen days from the date of receipt of notice, however, the complaint was not filed within fifteen days.

3.In the said circumstances, issue notice to respondent, returnable in three weeks.

4.There shall be an order of stay of further proceedings in S.T.C.No.107 of 2022 on the file of the learned Judicial Magistrate No.II, Vridhachalam, till then.

5.The personal appearance of petitioner is dispensed with till then.



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6.Post the matter after three weeks.”

3.When the matter came up for hearing on 24.01.2024, a counsel appeared and stated that he undertakes to file vakalat on behalf of the respondent. However, no vakalat has been filed till today and the counsel was also not present at the time of hearing.

4.Heard the learned counsel for the petitioner and carefully perused the materials available on record.

5.Two grounds have been raised by the learned counsel for the petitioner. The first ground is that statutory notice was not given within a period of 30 days from the date of receipt of information from the Bank regarding the dishonour of cheque. The second ground that was urged was that the complaint was not filed within the time stipulated after the statutory notice was received by the petitioner.

6.In so far as the first ground is concerned, the cheque is dated 15.07.2021 and it was deposited on 22.09.2021 and it was returned on the same day. The notice ought to have been issued within a



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period of 30 days. However, the notice was issued only on 23.11.2021 which was beyond the period of 30 days.

7.In so far as the second issue is concerned, the statutory notice is said to have been received by the petitioner on 26.11.2021 and the complaint has been filed on 23.12.2021. In so far as this issue is concerned, there is no illegality and the complaint has been filed on time.

8.The only consideration of this Court is regarding the first issue where, the statutory notice was issued beyond the period of 30 days as mandated under Section 138 (b) of the Negotiable Instruments Act. If this mandate is not complied with, the very maintainability of the private complaint will become questionable. This issue was dealt with by this Court in M.G.Mohamed Javid Vs. Nayeem Hannan reported in 2022 (1) MWN (Cr.) DCC 49 (Mad.). This Court held that since the statutory notice was issued beyond the period of 30 days, the complaint itself is illegal and that the learned Magistrate ought not to have taken cognizance of the complaint. The issue involved in this petition is covered by the above judgment.



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9.In the result, the proceedings in S.T.C.No.107 of 2022 on the file of the learned Judicial Magistrate No.II, Vridhachalam, is hereby quashed and this criminal original petition is allowed.

08.02.2024

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Judicial Magistrate No.II,
Vridhachalam.

2.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.



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N.ANAND VENKATESH,J.
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