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Crl.O.P.Nos.14055 and 14062 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.Nos.14055 and 14062 of 2023

And

CrL.M.P.Nos.8675, 8676, 8691 and 8692 of 2023

Palanisamy

... Petitioner in both the Crl.O.Ps.

Vs.

Sivaji

... Respondent in both the Crl.O.Ps.

Common Prayer:

Petitions filed under Section 482 of Cr.P.C., seeking to call for the records pertaining to the case in S.T.C.Nos.146 and 109 of 2021 respectively, on the file of Fast Track Cheque Cases, Judicial Magistrate-I, Attur and quash the same.

For Petitioner : Mr.Charles Kamalesh M.Appaji
For Respondent : Mr.R.Nalliyappan

COMMON ORDER

These criminal original petitions have been filed seeking to quash the proceedings in S.T.C.Nos.146 and 109 of 2021 respectively, on the file of Fast Track Cheque Cases, Judicial Magistrate-I, Attur.



Crl.O.P.Nos.14055 and 14062 of 2023

WEB COPY

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. When the matter came up for hearing on 23.06.2023, this Court passed the following order:

In Crl.O.P.No.14055 of 2023:

"This Criminal Original Petition is filed to call for the records pertaining to the case in STC.No.146 of 2021 on the file of Fast Track Cheque Cases, Judicial Magistrate-I, Attur and quash the same.

2. It is the submission of the learned counsel for the petitioner that, respondent filed a complaint under Section 138 Negotiable Instruments Act and it was pending in STC.No.146 of 2021 on the file of Fast Track Cheque Cases, Judicial Magistrate-I, Attur. The only ground, on which this quash petition filed is that, the impugned cheque was returned for the reason that "Drawer Signature Differs". Despite that, respondent repeatedly re-presented the cheque for another two times and again it was returned for the reason that



"Drawer Signature Differs". The repeated representations were made with a view to save the limitation.

3. In the said circumstances, issue notice to the 2nd respondent, returnable in three weeks.

4. Post the matter after three weeks."

In Crl.O.P.No.14062 of 2023:

"This Criminal Original Petition is filed to call for the records pertaining to the case in STC.No.109 of 2021 on the file of Fast Track Cheque Cases, Judicial Magistrate-I, Attur and quash the same.

2. It is the submission of the learned counsel for the petitioner that, respondent filed a complaint under Section 138 Negotiable Instruments Act and it is pending in STC.No.109 of 2021 on the file of Fast Track Cheque Cases, Judicial Magistrate-I, Attur. The only ground, on which this quash petition filed is that, the impugned cheque was returned for the reason that "Drawer Signature Differs". Despite that, respondent repeatedly re-



Crl.O.P.Nos.14055 and 14062 of 2023

presented the cheque for another two times and again it was returned for the reason that "Drawer Signature Differs". The repeated representations were made with a view to save the limitation.

3. In the said circumstances, issue notice to the 2nd respondent, returnable in three weeks.

4. Post the matter after three weeks."

4. On carefully reading the complaint filed by the respondent, it is seen that the respondent has specifically stated that he presented the cheque for encashment on 24.12.2020 and the cheque was returned on 29.12.2020 with an endorsement "Drawer Signature Differs". If the cheque had been returned with this endorsement, there is absolutely no reason as to why the respondent will once again inform the petitioner that he is going to represent the cheque and thereafter represent it twice. Obviously, the respondent has resorted to this practice since the cause of action for filing the complaint came to an end after the cheque was returned for the first time on 29.12.2020 and the respondent did not take any steps to proceed further by following the procedure under Section 138 (b) of the Negotiable



Crl.O.P.Nos.14055 and 14062 of 2023

Instruments Act. It defies common sense that a cheque which has been returned with an endorsement "Drawer Signature Differs" will be attempted to be represented.

5.The Apex Court has held that a cheque can be presented any number of times during its validity period and it was further held that a fresh cause of action will arise every time when the cheque is dishonoured. This preposition will hold good if the cheque is dishonoured on any other ground where it is alleged that the same was informed to the accused and the accused asked the complainant to once again represent the cheque. However, this contingency will never arise where the cheque was returned with an endorsement "Drawer Signature Differs". If the signature differs, every time when the cheque is represented, the cheque will be returned only with the same endorsement. Therefore, in a case of this nature, the cause of action for filing the complaint will arise the moment the cheque was dishonoured for the first time with an endorsement "Drawer Signature Differs" and thereafter statutory notice is issued within the time stipulated and the accused fails to repay back the cheque amount within the time stipulated. There is no question of a second cause of action in a case of this nature.



Crl.O.P.Nos.14055 and 14062 of 2023

WEB COPY

6.In the light of the above discussion, this Court has absolutely no hesitation to hold that the complaint itself is un-sustainable since it was filed much beyond the period after the first cause of action arose. Hence, the continuation of the proceedings before the Court below will result in abuse of process of Court and it requires the interference of this Court in exercise of its jurisdiction under Section 482 Cr.P.C.

7.In the result, these criminal original petitions are allowed and the proceedings in S.T.C.Nos.146 and 109 of 2021 respectively, on the file of Fast Track Cheque Cases, Judicial Magistrate-I, Attur are hereby quashed. Consequently, the connected miscellaneous petitions are closed.

08.02.2024

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1. Fast Track Cheque Cases, Judicial Magistrate-I, Attur
- 2.The Public Prosecutor,
High Court of Madras,

6/7



Chennai 600 104.

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Crl.O.P.Nos.14055 and 14062 of 2023

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