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CRL O.P. No.22995 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.10.2024

CORAM

The Hon`ble Mr. Justice P.DHANABAL

Crl. O.P. No.22995 of 2022
and Crl. M.P. Nos.14742 and 14743 of 2022

M/s. Nakoda Gems & Jewellery
Prop. C. Suresh Kumar Jain
S/o. Chothamal Jain

... Petitioner / Accused

vs.

M/s. Pragati Diamonds,
Partner P. Ravikumar

.... Respondent / Complainant

PRAYER: The Criminal Original petition is filed under Section 482 of Criminal Procedure Code to call for records concerned in C.C. No.1291 of 2021 pending on the file of the learned Metropolitan Magistrate cum Fast Track Court No.III, Saidapet, Chennai and quash the same.

For petitioner : Mr. T.R. Ravi

For Respondent : No appearance.

ORDER

This Criminal original petition has been filed by the petitioner to quash the proceedings in C.C. No.1291 of 2021 pending on the file of the learned Metropolitan Magistrate, Fast Track Court No.III, Saidapet,



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Chennai.

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2. According to the petitioner, the respondent filed a cheque complaint against him stating that the complainant and the respondent are doing business in Gold and Diamond jewels. The complainant supplied diamond bangles worth about Rs.2,57,454/- to the petitioner on 28.03.2019 along with invoice and the petitioner herein gave four cheques as security in favour of the complainant. Out of 4 cheques, last 3 cheques were honoured and encashed. The first cheque dated 21.04.2019 issued for a sum of Rs.80,000/- was presented for 3 times and the same was dishonoured. For that cheque alone, the above said case was filed. The cheque in dispute is dated 21.04.2019 for a sum of Rs.80,000/-. Return memo is dated 18.02.2019. Legal notice is dated 25.07.2019 and acknowledgement is dated 29.07.2019. Complaint was dated 31.07.2019. The complaint was filed on 01.08.2019. The complaint must have been filed as per the provisions of the Negotiable Instruments Act only after 14.08.2019, i.e., after 15 days from the date of receipt of legal notice. But the present complaint was filed, prematurely



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on 01.08.2019, without following the statutory limitation stated in the Act. Therefore, the complaint is not in accordance with law. Further, the complainant is a partnership firm and the complaint was filed by one of the partners with authorization dated 19.03.2021. But the complaint was filed on 01.08.2019. Therefore, on the date of filing of complaint, no valid authorization was given to the complainant to file this complaint. Therefore, without following the mandatory procedures, the complaint has been lodged and the trial Court has failed to consider the above said facts. Therefore, the pending proceedings are liable to be quashed as against this petitioner.

3. The learned counsel appearing for the petitioner would contend that the respondent has lodged the complaint under Section 138 of Negotiable Instruments Act as against the petitioner alleging that there is a business transaction between them, for that he gave 4 cheques, that already three cheques have been encashed and the last cheque dated 21.04.2019 for Rs.80,000/- presented for collection and the same was returned, thereafter the notice was issued on 25.07.2019,

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acknowledgement card is dated 29.07.2019, complaint was dated 31.07.2019. The complaint was filed on 01.08.2019. The complaint was ought to have been filed 14.08.2019, i.e., after 15 days from the date of receipt of a legal notice. Therefore, the complaint is premature and the same cannot taken on file and there is no any offence committed by the petitioner under the N.I. Act.

3.1. In support of his contention, the learned counsel appearing for the petitioner has relied upon the following judgments:

V.G. Srinivasan vs. D. Srinivasalu reported in 2021 (1) MWN (Crl) DCC 79 (Mad).

4. There is no representation on the side of respondent. Already this Court issued notice to the respondent. Even after the receipt of the notice, there is no representation on the side of the respondent. The name of the respondent also printed in the cause list. But, there is no representation. Therefore, this Court heard the petitioner's side, perused



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the available records and passed the order.

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5. According to the petitioner, the respondent has filed a cheque complaint under Section 138 of Negotiable Instruments Act and the trial Court, without considering that the complaint is prematured and no offence is made out, has taken cognizance. In fact, the receipt of notice is dated 29.07.2019. The complaint ought to have been presented before the Court after completion of 15 days from the date of receipt of a legal notice. But in this case, the complaint was presented on 01.08.2019. Thereafter, it was returned and the same complaint has been re-presented once again and cognizance was also taken based on the said re-presented complaint. Therefore, mandatory procedures have not been followed by the Magistrate while taking cognizance. The learned counsel appearing for the petitioner also relied on judgment in ***V.G. Srinivasan vs. D. Srinivasalu reported in 2021 (1) MWN (Crl) DCC 79 (Mad)***, wherein this Court in para nos.10 and 11 read as follows:-

"10. Before dealing with the merit of the case, it is better to consider the maintainability of this Complaint in view of



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*judgment of the Hon'ble Supreme Court reported in **Yogendra Pratap Singh v. Savitri Pandey & another, 2014 (3) MWN (Cr.) DCC 65 (SC)** (cited supra). The reading of the Judgment shows that two important questions had been taken up for consideration. They are:*

(i) Can cognizance of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 be taken on the basis of a Complaint filed before the expiry of the period of 15 days stipulated in the Notice required to be served upon the drawer of the Cheque in terms of Sections 138(c) of the Act aforementioned ? and

(ii) If answer to Question No.1 is in the negative, can the Complainant be permitted to present the Complaint again notwithstanding the fact that the period of one month stipulated under Section 142(b) for the filing of such a complaint has expired?

11. After elaborately considering various Judgment of Hon'ble Supreme Court as well as other High Courts, answer for question No.1 is that Clause (c) of Proviso to Section 138 of Negotiable Instruments Act, makes it clear that no complaint can be filed for an offence under Section 138 of Negotiable Instruments Act, unless the period of 15 days has elapsed. Any complaint before the expiry of 15 days from the date on which the Notice has been served on the drawer is no complaint at all in the eye of law. The Court is barred in law from taking cognizance of the complaint. It is not open to the Court to take cognizance of the said Complaint merely because on the date of consideration or taking cognizance thereof a period of 15 days from the date on which the notice has been served on the drawer has elapsed. If the period described in Clause (c) of Proviso to Section 138 has not expired, there is no commission of an offence or accrual of cause of action for filing the Complaint under Section 138 of Negotiable Instruments Act. Thus, the Question No.1 was answered in negative that if the Complaint is filed before the expiry of the period of 15 days stipulated in the notice, it could not be treated as Complaint in the eye of law and the Criminal proceeding initiated on such Complaint is liable to be quashed".

6. On perusal of the above judgment, it is clear that Clause (c) of



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Proviso to Section 138 of Negotiable Instruments Act, makes it clear that no complaint can be filed for an offence under Section 138 of Negotiable Instruments Act, unless the period of 15 days has been elapsed from the date of receipt of notice. Any complaint before the expiry of 15 days from the date on which the notice has been served on the drawer is no complaint at all in the eye of law. The Court is barred in law from taking cognizance of the complaint. It is not open to the Court to take cognizance of the said complaint, merely because on the date of consideration or taking cognizance, thereof, a period of 15 days from the date on which the notice has been served on the drawer has elapsed. If the period of date prescribed in the Clause C of Proviso to Section 138 of Negotiable Instruments Act, has not been expired, there is no commission of an offence or accrual of cause of action for filing the complaint under Section 138 of Negotiable Instruments Act. Thus, it could not be treated as complaint in the eye of law and the criminal proceedings initiated against such complaint are liable to be quashed.

7. Moreover, in the same case, in para no.13 also, this Court held



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that the complaint filed before the expiry of 15 days from the date of receipt of a legal notice issued under Clause (c) of Proviso to Section 138 of Negotiable Instruments Act is not maintainable. The complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the Proviso after satisfying the Court with sufficient cause.

8. In the case on hand also, the complaint was presented before the expiry of 15 days from the date of receipt of notice and the said complaint was returned by the Court and thereafter, again the same complaint was re-presented and no fresh complaint was filed by the complainant. Even according to the complainant, the cheque in dispute is dated 21.04.2019 for a sum of Rs.80,000/-. Return memo is dated 18.02.2019. Legal notice is dated 25.07.2019 and acknowledgement is dated 29.07.2019. Complaint was dated 31.07.2019 and it was filed on 01.08.2019. Therefore, the said judgment is squarely applicable to the



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present facts of the case.

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9. In view of the same, it is clear that there is no offence made out since the complainant has not presented the complaint after the expiry of mandatory period of 15 days from the date of return of notice and the very same complaint which returned, was re-presented later. Therefore, in this case, no commission of offence is made out under Section 138 of Negotiable Instruments Act. Therefore, the pending complaint is liable to be quashed.

10. In the result, the Criminal Original Petition is allowed. No costs. The connected miscellaneous petitions are closed.

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index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
mjs

To

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

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2. The Public Prosecutor, High Court, Madras.

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P.DHANABAL,J

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