

Crl.O.P.No.5206 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2025

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl. O.P. No. 5206 of 2024

and

Crl. M.P. Nos. 3791 and 3792 of 2024

Suthir

...Petitioner

-Vs-

Dr.K.V.Sivaprakash

S/o.K.S.Venkidusamy, Managing Director,

Venkitusamy Medical Centre And Hospital (P) Ltd.,

Sathy- Athani- Bhavani Main Road, Kaikattipirivu,

Athani, Anthiyur Taluk, Erode District.

... Respondent

Prayer: Criminal Original Petition filed, to call for the records in connection with complaint made in S.T.C. No. 954 of 2023 on the file of the Judicial Magistrate No.I, Gobichettipalayam and quash the same.

For Petitioner : Mr. D. Veerasekharan

For Respondent : Mr. M. Guruprasad



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ORDER

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This Criminal Original Petition has been filed to quash the complaint made in S.T.C. No. 954 of 2023 on the file of the Judicial Magistrate No.I, Gobichettipalayam.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act in STC.No.954 of 2023, alleging that the respondent is doing real estate business. While being so, the respondent paid a sum of Rs.30 lakhs as advance to the petitioner to purchase the property. Thereafter, further a sum of Rs.40 lakhs was paid as advance. However, the said land deal was not materialised and the petitioner promised to repay the said amount.

3. Towards repayment of the said loan amount, the petitioner issued cheque for a sum of Rs.70 lakhs. The said cheque was presented for collection finally on 01.07.2023 and the same was returned dishonoured for the reason “Insufficient funds”. After issuance of legal notice, the respondent filed a complaint.

4. Learned counsel for the petitioner would submit that on two



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grounds, the complaint cannot be sustainable and liable to be quashed.

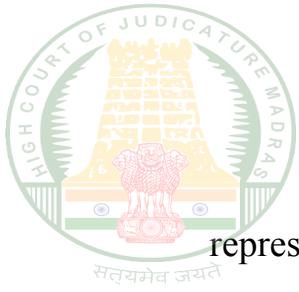
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1. The cheque was presented on 16.08.2023 after validity of three months.

2. The cheque was issued on 28.04.2023. Therefore, the validity of the cheque was expired as early as on 28.07.2023. However the said cheque was presented on 16.08.2023. Further the complaint was lodged after a period of limitation.

5. Learned counsel for the respondent would submit that, as per Section 138 of Negotiable Instruments Act, the period of presentation of cheque is six months. It has been notified by way of circular from Reserve Bank of India that the cheque has validity only for three months. Therefore, the circular cannot prevail over the Act. On the basis of circular, the Act has not been amended so far. Further it is mixed question of facts and as such, it has to be gone into by way of trial.

6. On perusal of the records, the cheque was issued on 28.04.2023 for a sum of Rs.70 lakhs. Though it was presented on 02.05.2023 and 01.07.2023, the respondent did not cause any legal notice. Finally it was



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represented for collection on 16.08.2023. On the very same day, it was returned for the reason “insufficient funds” by the return memo dated 16.08.2023. The cheque was presented after a period of three months from the date of issuance of cheque.

7. Though the learned counsel for the respondent raised grounds that though the RBI issued said cheque stating that the cheque is valid only for three months, the Act is not been amended so far, on perusal of the cheque dated 28.04.2023 it is categorically mentioned that the said cheque is valid for three months.

8. The provision under Section 138(a) of Negotiable Instruments Act, says that the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. Therefore, whether the circular prevails over the act or not, the act itself is very clear that the cheque should be presented for collection within a period of its validity. In the cheque itself mentioned that the cheque has valid only for three months from the date of drawing of the cheque. It was presented for collection after expiry



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of three months. Therefore, the cheque itself was not valid one for presentation.

9. In view of the above, no offence is made out under Section 138 of Negotiable Instruments Act as against the petitioner and it is liable to be quashed.

10. Accordingly, the proceedings in S.T.C. No. 954 of 2023 on the file of the Judicial Magistrate No.I, Gobichettipalayam is hereby quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

01.04.2025

Index : Yes/No
Neutral Citation : Yes/No
AT

To
The Judicial Magistrate No.I,
Gobichettipalayam



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G.K.ILANTHIRAIYAN. J,

AT

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Crl.M.P.No.3791 and 3792 of 2024

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