IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2026

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.10081 & 19372 of 2017

Crl.OP.No.10081 of 2017

T.R.Pachamuthu @ Paari Vendhar ... Petitioner

Vs.

1.S.Mukanchand Bothra(died)
2.M.Gagan Bothra (substituted for the deceased first respondent as per the recall order of this Court in Crl.MP.No.2468 of 2025 in Crl.OP.No.10081 of 2017 dated 07.03.2025) ... Respondents

Prayer: Criminal Original petition filed under Section 482 of Cr.P.C. to call for the records and quash the proceedings as against the petitioner pending in CC.No.1032 of 2017 pending on the file of the VII Metropolitan Magistrate, George Town, Chennai for an offence under Section 138 of Negotiable Instruments Act, 1881.

For Petitioner : Mr.R.Ganeshkumar

For Respondents : Mr.M.Gagan Bothra
(2nd respondent appeared in person)

Crl.OP.No.19372 of 2017

1.Vendar Movies Production
Office at Basement of Doshi Garden
Vadapalani, Chennai
2.S.Madhan ... Petitioners

Vs.

1.S.Mukanchand Bothra(died)
2.M.Gagan Bothra (substituted for the deceased first respondent as per the recall order of this Court in Crl.MP.No.15389 of 2025 in Crl.OP.No.19372 of 2017 dated 21.08.2025) ... Respondents

Prayer: Criminal Original petition filed under Section 482 of Cr.P.C. to call for the records in CC.No.1032 of 2017 pending on the file of the VII Metropolitan Magistrate, George Town, Chennai and quash the same subjective to the petitioner.

For Petitioners : Mr.L.Infant Dinesh

For Respondents : Mr.M.Gagan Bothra
(2nd respondent appeared in person)

COMMON ORDER

These criminal original petitions have been filed praying to quash the proceedings in CC.No.1032 of 2017 pending on the file of the VII Metropolitan Magistrate, George Town, Chennai

2. Petitioners in Crl.OP.No.19732 of 2017 are arrayed as A1 and A2 and the petitioner in Crl.O.P. No.10081 of 2017 is arrayed as A4 in CC.No.1032 of 2017. The first respondent had filed complaint for the

offence punishable under Section 138 of NI Act r/w 141 of NI Act, alleging that the first accused is a partnership firm running business in the name and style of 'Vendhar Movies' and accused 2 to 4 are its partners. On behalf of the first accused, the second accused had borrowed loan for interest from the first respondent for the business. The second accused had executed necessary documents in favour of the first respondent for availing loan. It was further alleged that at the time of borrowing loan amount, the fourth accused told the first respondent that both Vendhar TV and Vendhar Movies are one and the same. Believing the said words, the first respondent had lent a sum of Rs.7,50,00,000/- in favour of the accused. The first accused with the consent and knowledge of the fourth accused had entered into an agreement dated 11.01.2016. However, after repeated requests and demands made by the first respondent for repayment of the loan amount, the second accused by the communication dated 20.04.2016, had transferred some portion of the amount. Insofar as the remaining amount is concerned, the fourth accused directed the second accused to issue post dated cheques. Accordingly, cheques were issued for a sum of Rs.1,00,00,000/- and 1,60,00,000/- dated 28.11.2016 towards the discharge of partial liability out of the total liability. Both the cheques were presented for collection and the same were returned dishonoured for the reason 'instrument out dated stale'. After causing statutory notice, the first respondent lodged complaint. Pending the complaint, accused 1, 2 and 4 filed these petitions to quash the proceedings on the ground that the cheques were returned for the reason 'instrument out dated stale'. Therefore, there is absolutely no cause of action to lodge complaint without fulfilling the requirement under Section 138 of NI Act. Even assuming that the cheques were presented on time, the banker returned the cheque for the reason 'instrument out dated / stale', for which the petitioners are not liable to be punished since there is no cause of action to lodge complaint under Section 138 of NI Act. They further submit that insofar as the accused 2 to 4 are concerned, they are neither partners nor directors of the first accused. The first accused is the partnership concern, in which the fourth accused was neither partner nor had he played any role on behalf of the first accused. In fact, after receipt of the statutory notice, the fourth accused filed reply notice stating that the fourth accused is in no way connected with the first accused since he is not a partner of the first accused company. Further the fourth accused is neither a partner nor a signatory to the cheque. Without even considering the same, the trial court has taken cognizance for the offence punishable under Section 138 of NI Act and issued summons to all the accused persons.

3. Originally both the petitions were listed before this Court on 02.11.2023 and on that day, this Court allowed the petitions and quashed the impugned proceedings by order dated 02.11.2023. On that day, the first respondent did not appear either in person or through pleader. Aggrieved by the same, the son of the first respondent herein filed application before the Hon'ble Supreme Court of India in SLP(criminal)No.10070 of 2025 and the Hon'ble Supreme Court of India by order dated 14.07.2025, heard the petition to substitute him as the legal heir of the deceased first respondent and the same was allowed and cause title was ordered to be amended. To that extent, a memo was filed and the same was recorded and the second respondent was substituted.

4. The second respondent raised ground that order dated 02.11.2023 was passed in their absence. Therefore, the Hon'ble Supreme Court of India gave liberty to the legal heirs of the respondent to file application to recall the order passed by this Court dated 02.11.2023. Accordingly, the second respondent herein filed petitions in Crl.MP.No.2468 of 2025 & Crl.MP.No.15389 of 2025 to recall the order passed by this Court dated 02.11.2023 in Crl.OP.Nos.10081 & 19372 of 2017. Both the petitions were allowed and the legal heir of the first respondent was permitted to represent on behalf of the first respondent

herein. The legal heir of the first respondent by name Gagan Bothra, who is none other than the son of the first respondent, submits that the cheque was presented within a period of three months from the date of issuance of cheque. Unfortunately, the banker returned the cheque for the reason 'instrument out dated / stale'. Therefore, it can be established before the trial court by letting in evidence whether on the date of the presentation of the cheque, the cheque amount was available or not. Hence, the petitioners are liable to be punished for the offence punishable under Section 138 of NI Act. Therefore, the impugned proceedings cannot be quashed on its threshold. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Rameshchandra Ambalal Joshi Vs. The State of Gujarat and another*** rendered in Crl.A.434 of 2014 dated 18.02.2014, wherein it is held as follows:

> *8. Hence, there is no reason for not adopting the rule enunciated in the aforesaid case which is consistently followed and which is adopted in the General Clauses Act and the Limitation Act............…"*
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> *The correctness of this judgment came up for consideration before a three-Judge Bench of this Court in Econ Antri Ltd. vs. Rom Industries Ltd. & Anr., AIR 2013 SC 3283 which approved the reasoning of this Court given*

in Saketh (supra) and Haru Das Gupta (supra) and held as under:

"16. We have extensively referred to Saketh. The reasoning of this Court in Saketh based on the above English decisions and decision of this Court in Haru Das Gupta which aptly lay down and explain the principle that where a particular time is given from a certain date within which an act has to be done, the day of the date is to be excluded, commends itself to us as against the reasoning of this Court in SIL Import USA where there is no reference to the said decisions.

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22. In view of the above, it is not possible to hold that the word 'of' occurring in Section 138(a) and 142(b) of the N.I.Act is to be interpreted differently as against the word 'from' occurring in Section 138(a) of the N.I.Act; and that for the purposes of Section 142(b), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises, the starting day on which the cause of action arises should be included for computing the period of 30 days. As held in Ex parte Fallon (1793) 5 Term Rep 283 the words 'of', 'from' and 'after' may, in a given case, mean really the same thing. As stated in Stroud's Judicial Dictionary, Vol. 3 1953 Edition, Note (5), the word 'of' is sometimes equivalent of 'after'."

At this stage, we would also like to refer to Halsbury's Law of England, Vol. 37, 3rd Edn., Paragraph 143 at Pages 83-84 which provides for calculation of a calendar month:

"143. Calendar month running from arbitrary date. When the period prescribed is a calendar month running from any arbitrary date the period expires with the day in the succeeding month immediately preceding the day corresponding to the date upon which the period starts; save that, if the period starts at the end of a calendar month which contains more days than the next succeeding month, the period expires at the end of the latter month."

Drawing a conclusion from the above mentioned authorities, we are of the opinion that the use of word "from" in Section 138(a) requires exclusion of the first day on which the cheque was drawn and inclusion of the last day within which such act needs to be done. In other words, six months would expire one day prior to the date in the corresponding month and in case no such day falls, the last day of the immediate previous month. Hence, for all purposes, the date on which the cheque was drawn, i.e., 31.12.2005 will be excluded and the period of six months will be reckoned from the next day i.e. from 1.1.2006; meaning thereby that according to the British calendar, the period of six months will expire at the end of the 30th day of June, 2006. Since the cheque was presented on 30.6.2006, we are of the view that it was presented within the period prescribed.

> *Viewed from any angle, the prosecution is not time barred and therefore, cannot be scuttled at this stage on this ground. As the matter is pending since long, the learned Magistrate in seisin of the trial shall make endeavour to conclude it within six months from the date the appellant next appears in the case. We direct the appellant to appear before the trial Judge on 3rd of March, 2014 and no notice is to be issued to him for his appearance.*
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> *In the result, we do not find any merit in the appeal and it is dismissed accordingly.*

5. Per contra, the learned counsel for the petitioners would submit that both the cheques were dated 28.11.2016 issued for a sum of Rs.1 crore and Rs.1 crore 60 lakhs in favour of the deceased first respondent. However, both the cheques were presented for collection on 27.02.2017. Both the cheques were returned dishonoured for the reason 'instrument out dated stale' by the return memo dated 28.02.2017. Therefore, the reason for dishonour of the cheque could not raise any cause of action to lodge complaint for the offence punishable under Section 138 of NI Act since both the cheques were returned for the reason 'instrument out dated stale'. It means that the cheques were presented after a period of three months from the date of the issuance of cheques. Therefore, there is no cause of action to lodge complaint for the offence

punishable under Section 138 of NI Act.

6. Heard, the learned counsel appearing for the petitioners and the second respondent appeared in person and perused all the materials placed before this Court.

7. The second respondent i.e. the legal heir of the deceased first respondent (the son of the deceased first respondent) has been substituted on behalf of the deceased first respondent as per the recall orders of this Court. On perusal of oral and documentary evidences, the following points arise for consideration in these quash petitions:

(i) Whether the cheques were presented on time or not?

(ii) If the cheques were presented on time, whether the accused is liable to be punished under Section 138 of NI Act or not?

8. Both the cheques were issued on 28.11.2016. Both the cheques were presented for collection on 27.02.2017. Both were returned dishonoured for the reason 'instrument out dated stale' by the banker namely Axis Bank Limited, Virugambakkam, Chennai. At this juncture, whether the limitation period for presenting a cheque is only a period of 90 days and, consequently, whether three months would mean a period of

90 days has to be seen. The word “month” has been defined under Section 3(35) of the General Clauses Act to mean a month reckoned according to the British calendar. Accordingly, this Court is of the opinion that the period of three months cannot be calculated on 30 days in a month basis. The use of the word “three months” requires exclusion of the first day on which the cheque was drawn and the period ends on the corresponding date in the third month. Therefore the date on which the cheques were drawn i.e. 28.11.2016 will be excluded and the period of three months will be reckoned from the next day i.e. from 29.11.2016 and the period of three months will expire on 28.02.2017. Therefore, the cheques were presented within the period prescribed under Section 138 of NI Act. However, the banker of the petitioners returned the cheques for the reason ‘instrument out dated stale’. Therefore, the first point is answered in favour of the petitioners.

9. For return of the cheques, the petitioners are in no way responsible and the banker is only responsible for return of the cheques. Though the cheques were presented within the prescribed period under the Act, both the cheques were returned for the reason ‘instrument out dated stale’ which means the cheques were presented after validity period. Therefore, it is relevant to extract the provision under Section 138

of NI Act hereunder:

> *138. Dishonour of cheque for insufficiency, etc., of funds in the account.—*
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> *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:*

10. Therefore, in order to initiate the proceedings under Section 138 of NI Act, there must be cause of action to lodge complaint. Admittedly, the cheques were returned for the reason 'instrument out dated stale', for which the petitioners are in no way responsible and the banker wrongly returned the cheques as if both the cheques were presented after its expiry, for which the petitioners cannot be held liable for the offence under Section 138 of NI Act. Accordingly, the second

point is also answered in favour of the petitioners.

11. Insofar as the fourth accused is concerned, after receipt of the statutory notice dated 25.03.2017, he caused reply notice dated 05.04.2017. The relevant portion of the reply notice is extracted hereunder:

> *1. Our client states that this notice is sent only in order to defame our client and his reputation. Our client denies having any connection with the production company namely "VENDAR MOVIES" and the averment that our client is looking after and managing the day to day affairs of the company and controlling other persons is stoutly denied. Further it is needless to say that our client was never the partner in the production company namely "VENDAR MOVIES" at any point of time. Your client is put to strict proof of the same.*
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> *2. Our client denies the averment in unnumbered para 2 of your notice. Our client denies having induced anybody to borrow from your client. Our client denies having borrowed any amount directly or through anybody since there was no need or necessity to borrow the amount from your client and as such the entire averment against our client is nothing but false and our client stoutly denies it.*

3. Further our client is not concerned with the cheque issued by somebody else. Our client reiterates that he has not borrowed any amount for himself or for anybody else and as such there is no legally enforceable debt at all and your client is put to strict proof thereof.

4.. Our client further states that he is neither a borrower nor a signatory to the cheque and is in no way connected with "VENDAR MOVIES", or the cheque bearing No 223838 and 223839 dt. 28-11-2016 for the sum of Rs. 1,00,00,000/-(One Crore) and another for Rs. 1,60,00,000/ drawn on Axis Bank Ltd, Virugambakkam Branch, Chennai -92.Our client states that he was never in need to approach your client for any loan and he does not even know your client..

5. Our client states that your client had earlier sent a legal notice dated 28-06-2016 to our client in respect of a cheque dated 13.06.2016 bearing No: 223836 drawn on M/s. Axis Bank Ltd., Virugambakkam, Chennai 600 092 for Rs. 1,00,00,000/- (Rupees One Crore Only) with almost similar averments for which our client had sent a detailed reply to him. Thereafter your client had filed a private complaint with false averments before the Learned Metropolitan Magistrate, Fast Track-I, Allikulam, Chennai 600 003 which was numbered as C.C.No: 5734 of 2016. While this is so after receipt of summons from the court our client approached the Hon'ble High Court and filed the quash petition in Crl.O.P.No: 25728 of 2016, the Hon'ble High Court *has stayed the proceedings and dispensed with his personal appearance in C.C.No: 5734 of 2016. As per the directions of the Hon'ble High Court our client has also taken notice on your client. Suppressing all the above facts your client has with dishonest and malicious intention to cause unnecessary hardship and harassment to our client has wrongly instructed your good office to issue the unenforceable/defective notice with false and untenable allegations to our client.*

12. Thus it is clear that the fourth accused had never been a partner of the first accused at any point of time. Further, the fourth accused did not borrow any amount from the first respondent, directly or through anybody. The fourth accused is neither partner nor signatory of the cheque. The first respondent did not even produce a single piece of evidence to show that the fourth accused is also one of the partners of the first accused. Therefore, no offence is made out against the fourth accused who is not vicariously liable for the offence committed by the first accused. In fact, no cause of action arose to lodge complaint as against any of the accused persons since the cheques were returned for the reason 'instrument out dated stale' by the banker though it was presented on time, for which the accused cannot be held liable for the offence punishable under Section 138 of NI Act. Further, the deceased

first respondent lodged complaint without any cause of action to prosecute the accused for the offence punishable under Section 138 of NI Act. Therefore, the submissions of the substituted respondent on behalf of the deceased first respondent cannot be countenanced.

13. In view of the above discussion, the entire proceedings in CC.No.1032 of 2017 pending on the file of the VII Metropolitan Magistrate, George Town, Chennai is quashed and both the criminal original petitions stand allowed. However, the second respondent is at liberty to proceed against the banker in accordance with law.

03.03.2026

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To

VII Metropolitan Magistrate, George Town, Chennai

G.K.ILANTHIRAIYAN, J.

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Crl.O.P.Nos.10081 & 19372 of 2017

03.03.2026