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CrI.O.P.No.23155 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2026

CORAM:

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CrI.O.P.No.23155 of 2022
and CrI.MP No.14797 of 2022

S.Mothilal

... Petitioner

Vs.

Etienne Andrechemise

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita/Section 482 Cr.P.C., to call for the records pertains to the impugned proceedings in STC.No.1329 of 2021 on the file of the Judicial Magistrate II, Puducherry and quash the same.

For Petitioner : Mr.P.R.Thiruneelakandan

For Respondent : Mr.R.Thiagarajan

ORDER

The present Criminal Original Petition has been filed seeking to quash the proceeding in STC.No.1329 of 2021 on the file of the Judicial Magistrate II, Puducherry, for the alleged offences under Section 138 and 142 of Negotiable Instrument Act (NI Act), pending against the petitioner.



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2. Heard Mr.P.R.Thiruneelakandan, learned counsel appearing for the petitioner and Mr.R.Thiagarajan, learned counsel appearing for the respondent.

3. The only point urged by the learned counsel for the petitioner is that the cheque had been unpaid and in the return memo, the reason for return of cheque was stated as “Kindly contact Drawer/ Drawee Bank and please present cheque again” and in such circumstances, when the cheque had not been returned for insufficiency of funds and only with a direction to contact the Drawer bank, no offence is made out under Section 138 of the NI Act against the petitioner. Hence, the proceedings against the petitioner is liable to be quashed. In support of his contention, learned counsel relied on the decisions of the learned Single Judges of this Court in Crl.O.P.Nos.8664 of 2021, 4573 of 2020 and 10406 of 2019.

4. Per contra, Mr.R.Thiagarajan, learned counsel appearing for the respondent would submit that in a similar circumstance, a learned Single Judge of the Madhya Pradesh High Court, in the case of ***Kishore Sharma Vs. Sachin Dubey, in M.Cr.C No.17897/2018***, vide order dated 15.11.2018 has quashed the proceedings. However, the complainant in the said case has



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approached the Hon'ble Supreme Court in CrI.A.No.1325 of 2019, in which the Hon'ble Apex Court has held that "the remarks noted on the cheque return memo are a matter for evidence and it can be only decided by the Trial Court" and allowed the appeal and set aside the order passed by the learned Single Judge. He would further submit that matters like this are triable issues, which can only be tried before the Trial Court and hence, this quash petition has to be dismissed.

5. Of course, the learned Single Judges of this Court in CrI.O.P.Nos.8664 of 2021, 4573 of 2020 and 10406 of 2019, have allowed the quash petitions for the offence under Section 138 of Negotiable Instruments Act. However, in a similar circumstance, against the order passed by the Single Judge of Madhya Pradesh High Court, the complainant therein has filed CrI.A.No.1325 of 2019 and the Hon'ble Apex Court had allowed the appeal and dismissed the petition, holding as follows:

"3. The present appeal arises from the judgment and order dated 15.11.2018 passed by the High Court of Madhya Pradesh, Indore Bench in M.Cr.C. No.17894 of 2018 whereby the High Court allowed the quashing petition filed by the respondent under Section 482 of Cr.P.C. on two counts. Firstly, that the legal notice has not been served on the respondent within the statutory period and secondly, because of the remark noted on the cheque return memo.

4. Both these facts would require the parties to produce evidence and are triable issues, as expounded by this Court in 'Ajeet Seeds Limited vs. K.Gopala Krishnaiah' reported in (2014) 12 SCC



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685 and in ‘ Laxmi Dyechem vs. State of Gujarat and Others’ reported in (2012) 13 SCC 375. As a result, even this appeal ought to succeed. The impugned judgment and order is accordingly set aside and the appeal is allowed.”

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6. In view of the above, this petition stands dismissed. The learned Judicial Magistrate II, Puducherry, is directed to complete the trial as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. Consequently, connected CrI.MP.No.14797 of 2022 is closed.

03.02.2026

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Neutral Citation: Yes/No



To

The Judicial Magistrate II, Puducherry.

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A.D.JAGADISH CHANDIRA, J.

dsn

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