



Crl.O.P.No.32273 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2026

CORAM:

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

Crl.O.P.No.32273 of 2022 and
Crl.MP.No.19901 of 2022

Dr.Anbarasan

... Petitioner

Vs.

M.Venkatesan

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Cr.P.C. praying to call for the records and to quash the complaint in STC.No.446 of 2022 pending on the file of Judicial Magistrate Court-1 at Ariyalur.

For Petitioner : Mr.D.Murthy

For Respondent : Mr.K.Pradeep Raj

ORDER

This criminal original petition has been filed praying to quash the proceedings in STC.No.446 of 2022 pending on the file of Judicial Magistrate Court-1 at Ariyalur.

2. The petitioner is the accused in the complaint lodged by the



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respondent for the offence punishable under Section 138 of NI Act alleging that the petitioner had borrowed a sum of Rs.20,00,000/- from the respondent and in order to repay the said amount, the petitioner issued cheque for the said sum dated 04.04.2022. It was presented for collection. However, it was returned dishonoured for the reason 'insufficient funds'. After causing statutory notice, the respondent lodged complaint and the same has been taken cognizance by the trial court in STC.No.446 of 2022.

3. The learned counsel appearing for the petitioner would submit that the complaint itself is premature one. On the date of lodgment of complaint, there was no cause of action to prosecute the petitioner. The statutory notice dated 12.04.2022 was received by the petitioner only on 16.04.2022. Thus the cause of action begins to run and to reckon from the date immediately following the day on which 15 days from the date of receipt of the notice by the drawer. It expires on 01.05.2022. Therefore, only after 01.05.2022, the respondent has cause of action to lodge complaint. But the complaint was presented before the trial court as early as on 26.04.2022, much prior to the cause of the action arose. Therefore, it is clear violation of provisions under Section 138(c) of NI Act.



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4. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court,

5. The Hon'ble Supreme Court of India, in the case of ***Yogendra Pratap Singh Vs. Savitri Pandey and another*** reported in ***CDJ 2014 SC 802***, held as follows:

“37. A complaint filed before expiry of 15 days from the date on which notice has been served on drawer/accused cannot be said to disclose the cause of action in terms of clause (c) of the proviso to [Section 138](#) and upon such complaint which does not disclose the cause of action the Court is not competent to take cognizance. A conjoint reading of [Section 138](#), which defines as to when and under what circumstances an offence can be said to have been committed, with [Section 142\(b\)](#) of the NI Act, that reiterates the position of the point of time when the cause of action has arisen, leaves no manner of doubt that no offence can be said to have been committed unless and until the period of 15 days, as prescribed under clause (c) of the proviso to [Section 138](#), has, in fact, elapsed. Therefore, a Court is barred in law from taking cognizance of such complaint. It is not open to the Court to take cognizance of such a complaint merely because on the date of consideration or taking



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*cognizance thereof a period of 15 days from the date on which the notice has been served on the drawer/accused has elapsed. We have no doubt that all the five essential features of [Section 138](#) of the NI Act, as noted in the judgment of this Court in *Kusum Ingots & Alloys Ltd.*¹⁹ and which we have approved, must be satisfied for a complaint to be filed under [Section 138](#). If the period prescribed in clause (c) of the proviso to [Section 138](#) has not expired, there is no commission of an offence nor accrual of cause of action for filing of complaint under [Section 138](#) of the NI Act.”*

6. Subsequently, the same has been clarified by the Hon’ble Supreme Court of India in the case of ***Gajanand Burange Vs. Laxmi Chand Goyal*** reported in **2022 Live Law (SC) 682** by issuing directions as follows:

“10. Hence, the following order:

(i) The impugned judgment and order of the Single Judge of the High Court of Chhattisgarh dated 28 November 2018 shall stand set aside; and

(ii) The respondent would be at liberty to institute a fresh complaint and since the earlier complaint could not be presented within the time prescribed by Section 142(b) of the NI Act, the respondent would be at liberty to seek the benefit of the proviso by satisfying the trial court of sufficient cause for the delay in instituting the complaint.”



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7. In view of the above, the entire proceedings in STC.No.446 of 2022, pending on the file of Judicial Magistrate Court-1 at Ariyalur, is quashed. The respondent is at liberty to lodge a fresh complaint within a period of one month from the date of receipt of this order and in that event, the delay in filing the complaint will be treated as having been condoned under proviso to clause (b) of Section 142 of Negotiable Instruments Act.

8. With the above liberty, this criminal original petition stands allowed. Consequently, connected miscellaneous petition is closed.

11.03.2026

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

Judicial Magistrate Court-1 at Ariyalur



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G.K.ILANTHIRAIYAN, J.

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