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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.09.2026

CORAM

THE HON'BLE MR JUSTICE G.K. ILANTHIRAIYAN

Crl.O.P.No.18141 of 2026
and Crl.M.P.No.12112 of 2026

Deepak Kumar Rath … Petitioner

vs.

M/s Macmillan Education India Pvt. Ltd.
Through its Authorized Representative
Mr.S.Sampath Kumar,
No.21, Pathloss Road,
Chennai-600002 … Respondent

PRAYER:- Criminal Original Petition is filed under Section 482 Criminal Procedure Code read with Section 528 of BNSS, 2023, to call for the records of STC No.11184/2025 on the file of FTC-I, Metropolitan Magistrate Court, Allikulam, Egmore, Chennai and quash the same.

For Petitioner : Mr.Durga Prasad Pattnaik

For Respondent : Mr.S.Chinnasamy

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.11184 of 2025 on the file of the FTC-I, Metropolitan Magistrate Court, Allikulam, Egmore, Chennai.

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2. The petitioner is an accused in the complaint lodged by the respondent for the offences punishable under Section 138 of the Negotiable Instruments Act, 1881, alleging that the petitioner issued cheque for a sum of Rs.43,56,004/- which includes interest for a legally enforceable debt for supply of books by the respondent/complainant. The said cheque was presented for collection. However, it was dishonoured and returned for the reason 'Account Blocked'. After causing legal notice, the respondent lodged complaint and the same has been taken cognizance by the Trial Court.

3. The learned counsel appearing for the petitioner submits that the complaint was originally filed on 26.12.2023. Though, there was a delay in filing the complaint, the complainant did not file any petition to condone the delay. It was noted by Trial Court only at the time of recording sworn statement and taking cognizance that too after lapse of 1 year 5 months and 24 days. At that juncture, the respondent filed condone delay petition, as if there was only 4 days delay in filing the complaint, though there was delay of more than 1 ½ years. The Trial Court entertained the said petition and without even serving any notice to the accused, mechanically allowed the condone delay petition on the ground that the delay is meagre and had taken cognizance in the complaint lodged by the complainant. The learned counsel also vehemently contended that no notice was served on the accused in the

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condone delay petition. Therefore, the very complaint itself is not barred by limitation and liable to be quashed.

4. Per contra, the learned counsel appearing for the respondent submits that the notice was duly served on the accused in the condone delay petition. Initially, the complaint was filed after 4 days, without any condone delay petition. Subsequently, the respondent filed condone delay petition. Therefore, the delay has to be calculated only from the date of filing the complaint. It was duly entertained by the Trial Court and allowed, after issuance notice to the accused. However, after receipt of notice, the accused failed to appear before the Trial Court and did not raise any objection. Hence, the complaint is very much maintainable and the other grounds raised by the petitioner can be considered only before the Trial Court during the trial.

5. Heard the learned Counsel appearing on either side and perused the materials placed on record.

6. On perusal of the records, it is revealed that the petitioner issued cheque for a sum of Rs.43,56,004/- and the same was presented on 28.09.2023. It was returned with the Return Memo dated 09.10.2023 for the reason 'Account Blocked' by the Drawer of the cheque. Thereafter, the respondent issued demand notice on 18.10.2023. It was received by the

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accused and also issued a reply notice dated 10.11.2023. Thereafter, the complaint was presented on 26.12.2023 in Filing No.84167/2023. Therefore, there was a delay of 14 days, however it was not noticed by the Trial Court. Only at the time of taking cognizance, while recording the sworn statement of the complainant, the Trial Court noticed that there was delay in filing the complaint.

7. In order to cure the said defect, the complainant filed an application to condone the delay of 4 days instead of 14 days. In the said condone delay petition, the Trial Court ordered notice. However, it was not served on the accused. But the Trial Court allowed the condone delay petition, as if notice was served on the accused and no one was present on the date of enquiry and did not raise any objections in the condone delay petition and further, the delay is only meagre and condoned the delay.

8. However, the said defect cannot be treated as a curable defect, since the complaint itself was filed beyond the prescribed period of limitation without any application filed by the complainant seeking condonation of delay. As per the proviso to Section 142(1)(b) of the Negotiable Instruments Act, 1881, a complaint filed beyond the prescribed period can be entertained only when the complainant satisfies the Court that

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there was sufficient cause for not making the complaint within the prescribed period. In this regard, reliance can be placed upon the judgment of the Hon'ble Supreme Court of India in the case of **H.S. Oberoi Buildtech Pvt. Ltd. & Ors. v. M/s. MSN Woodtech**, reported in **2025 LiveLaw (SC) 889** wherein it has been clarified that where the statute prescribes a mandatory period of limitation for filing a complaint, the Court cannot presume or infer condonation of delay in the absence of a proper application seeking such condonation at the time of filing. In the absence of an application seeking condonation of delay at the time of filing the complaint, the complaint cannot be treated as validly instituted.

9. Though the complaint was originally filed without any application seeking condonation of delay, the complainant, after a lapse of about 1 ½ years and only after the said defect was noticed by the learned Trial Court, came forward to file an application seeking condonation of a delay of 4 days. Even in the said application, the period of delay was not properly calculated. A complaint which was presented beyond the prescribed time limit, cannot subsequently be treated as having been validly instituted on the original date merely by filing an application for condonation of delay after a substantial lapse of time and that too only after the defect was noticed by the Trial Court.

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10. In the present case, the complainant did not seek condonation of delay at the time of presenting the complaint. The application for condonation of delay was filed only after a lapse of about 1 ½ years and after the Trial Court had noticed the defect in the institution of the complaint. Therefore, the subsequent application cannot have the effect of retrospectively validating the original defective presentation of the complaint or treating the date of such defective presentation as the valid date of filing for the purpose of limitation. In such circumstances, the complaint having been instituted beyond the prescribed time limit under Section 142(1)(b) of the Negotiable Instruments Act, was barred by limitation. Therefore, the Trial Court ought not to have taken cognizance of the belatedly filed complaint that too in the absence of any application seeking condonation of delay.

11. Further, on perusal of the records, it is revealed that, on 19.08.2025, the Trial Court took cognizance of the complaint filed by the respondent. On the very same day, the application filed by the respondent seeking condonation of delay in Crl.M.P.No.9359 of 2025 was allowed. This would show that, even before the application seeking condonation of delay was considered and allowed, the learned Trial Court had already proceeded with the complaint, recorded the sworn statement of the respondent and

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arrived at a satisfaction that there were sufficient grounds to proceed. Therefore, the Trial Court committed an error in taking cognizance of the complaint even before considering and allowing the application seeking condonation of delay. The question of taking cognizance could arise only after the delay in filing the complaint was duly condoned in accordance with the proviso to Section 142(1)(b) of the Negotiable Instruments Act. In view of the above discussions, the cognizance taken by the Trial Court cannot be sustained in law and liable to be quashed.

12. Accordingly, the proceedings pending in S.T.C.No.11184 of 2025 on the file of the FTC-I, Metropolitan Magistrate Court, Allikulam, Egmore, Chennai is hereby quashed and this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

03.09.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
dm

To

The FTC-I, Metropolitan Magistrate Court,
Allikulam, Egmore, Chennai.

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G.K. ILANTHIRAIYAN, J.

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