

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

Cr1.Rev.Pet.No. 2243 of 2007 ()

AGAINST THE ORDER IN CMP 3603/2005 of J.M.F.C.-I,KOZHIKODE
DATED 06-11-2006

REVISION PETITIONER(S):

P.MAMMED, S/O MAMMUNNI,
MANAGING PARTNER, M/S NOOR ENTERPRISES
ENGINEER & CONTRACRORS, 17/158 B, KARUVANTHIRUTHI
FEROKE, KOZHIKODE., (FEROKE POLICE STATION
CALICUT)

BY ADVS.SRI.MANJERI SUNDERRAJ
SRI.B.PREMNATH (E)

RESPONDENT(S):

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1. STATE OF KERALA REP. BY SHO ELATHOOR
POLICE STATION, KOZHIKODE CRIME FIR 178/2005 BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
 2. M.V.BAVA, S/O KUNHIBAVA, PROPRIETOR,
M/S M.V.BAVA ENGINEERING CONTRACTOR, MELEVEETIL
"FAIROOSE", T.S.ROAD, CHALIYAM P.O.
KOZHIKODE., (FEROKE POLICE STATION, CALICUT)

R1 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 01-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.2243 of 2007

Dated this the 1st day of October, 2015

ORDER

The revision petitioner, who is the complainant in C.M.P.No.3603/2005 on the file of Judicial First Class Magistrate Court-I, Kozhikode, challenges the order of dismissal u/s.203 Cr.P.C. He filed the above case alleging offence punishable u/s.420 IPC and 138 of the Negotiable Instruments Act (herein after referred to as the N.I. Act). According to the complainant, the accused issued three cheques in discharge of a debt in favour of M/s. Noor Enterprises. When cheques were presented for encashment, they were dishonoured for the reason of 'account closed'. Hence, the above complaint. During enquiry, the learned

Magistrate directed the revision petitioner to appear before Court. Before issuing process to the accused, the trial Court conducted an enquiry and the revision petitioner failed to tender evidence. In the circumstances, the learned Magistrate was of the view that the complainant wilfully remained absent as he is unable to make out of prima facie case and no ground to proceed further in the case. Accordingly, he dismissed the complaint u/s.203 Cr.P.C.

2. Section 203 Cr.P.C. reads as follows:

"203. Dismissal of complaint.- If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

Section 203 requires a magistrate taking cognizance of an offence on a complaint to form an opinion as to whether or not there are sufficient grounds to proceed with the case.

This opinion must be based on the statements made by the complainant and his witnesses and the result of the investigation or inquiry under Sections 202, if any. The magistrate must apply his mind to those materials and then form his opinion as to whether or not there is sufficient ground for proceeding.

3. Therefore, the magistrate has to form an opinion as to whether the process should be issued or not, after perusal of the complaint and the consideration of the evidence on oath. What the magistrate has to see is whether there is any evidence in support of the averment made in the complaint, and not whether the evidence is sufficient to warrant a conviction. It may be noted that when there is no sufficient ground for proceeding, the Magistrate has to make an opinion and exercise his discretion in a judicial manner. "Sufficient ground for

proceeding" was considered by the Apex Court in Chandra Deo Singh v. Prokash Chandra Bose [AIR 1963 SC 1430], where dismissal of a complaint by the magistrate at the stage of inquiry under Sections 202 was set aside. The Supreme Court laid down that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction. If the magistrate finds that the evidence is self-contradictory, or intrinsically untrustworthy, process cannot be issued if that evidence does not make out a prima facie case. Here, after considering the statement on oath of the complainant and witnesses, learned Magistrate dismissed the complaint and briefly recorded his reasons.

There is no merit in this revision petition and it is dismissed accordingly.

P.D. RAJAN, JUDGE.

acd

