

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Petition No. 788 of 2011
and
M.P. No. 1 of 2011

M/s. Erode Annai Spinning Mills (P) Ltd.,
by its Managing Director
P.K.Duraisamy, represented by
Power Agent V.Velusamy
5, Vellode Road, Perundurai R.S.
..Petitioner/Petitioner/Complainant

Versus

M/s. Sri Venkatesa Perumal Mills
by its Proprietor S.Kandavadivel
S/o. Saminathan
D.No.8/102, S.S.No.13/1
Karaipudur Village
Arulpuram Post, Veerapandia Via
Tiruppur District
... Respondent/Respondent/Accused

Criminal Revision Case filed under Section 397 and 401 of Cr.P.C. against the order dated 17.5.2011 made in C.M.P. No. 1518 of 2011 in C.C. No. 19 of 2008 on the file of the District Munsif - cum - Judicial Magistrate, Perundurai and set aside the same.

For Petitioner : Mr. N.Manokaran
For respondent : Mr. L.Mouli

ORDER

The petitioner has come forward with this Criminal Revision case questioning the correctness of the order dated 17.5.2011 made in C.M.P. No. 1518 of 2011 in C.C. No.19 of 2008 on the file of the District Munsif - cum - Judicial Magistrate, Perundurai.

2. The petitioner / complainant Mills are manufacturer of Yarn and Fabric and the respondent / accused is a textiles merchant. During the course of transaction, the respondent/accused owe to a sum of Rs.10,05,600/- and in order to discharge the same, the accused issued four cheques and when the same were presented for collection, they were returned unpaid. Therefore, after issuing statutory notice, the petitioner herein has filed a case against the respondent/

accused for the offence under Section 138 of the Negotiable Instrument Act and the same was taken cognizance in C.C. No.19 of 2008 before the Court below.

3. Pending C.C. No. 233 of 2010, the petitioner has taken out an application in C.M.P.No.1518 of 2011 under Section 216 of the Criminal Procedure Code to alter the charges from Section 138 of Negotiable Instruments Act to under Section 420 of IPC. The Court below dismissed the C.M.P.No.1134 of 2011 holding that the petitioner has not made out any case or produced any material to alter the charge under Section 420 IPC. Against, which the present Criminal Revision case is filed.

4. The learned counsel for the petitioner submitted that only after the examination of the Bank Manager, the petitioner came to know that the cheques were not of the accused. Therefore, the learned counsel submitted that though no ingredients have been made in the allegation to that effect, the Court below ought to have taken into consideration the evidence of the Bank Manager before passing orders.

5. The learned counsel for the respondent would contend that the defence evidence was closed and the respondent/ accused also argued their case and belatedly at the end of the trial, the petitioner has filed the present petition in order to drag on the proceedings. The learned counsel would further contend that the cheques have not been issued by the accused and hence, the question of cheating does not arise. The learned counsel would also contend that the Court below after taking into consideration the evidence as well as the complaint, has rightly dismissed the petition.

6. I heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the records.

7. The only ground raised by the petitioner is that the accused issued the cheques not belonging to him and only after the examination of the Bank Manager, they came to know that it is not the cheque of the accused. Therefore, petition has been filed under Section 216 to alter the charge under Section 420 IPC.

8. Admittedly, no ingredients or allegations have been made in the complaint. Section 216 Cr.P.C. empowers the court to alter or add charges only on the evidences and circumstances of the case, however, in the present case, as rightly pointed out by the court below, no averments and ingredients of offence under Section 420 of IPC and cheating is not stated anything neither in the pre suit notice, nor in his complaint filed by the petitioner. The petitioner has filed the present petition for alteration of charges under Section 420 IPC without any material.

9. In this context, reference can be made to my own order reported in the case of (State represented by The Inspector of Police, H-8, Thiruvottriyur Police Station vs. K.P. Shankar and others) 2015 2 Law Weekly (Cr1) 384 wherein in Para Nos. 19 and 20, I held as follows:-

"19. Again, this Court in the decision in the case of (P. Krithikalakshmi vs. Sri Ganesh and others) 2013 (3) Madras Weekly Notes (Cr1) 521 has reiterated the legal position that neither the prosecution nor an accused has a right to file a petition under Section 216 of Cr.P.C. requiring the Court to frame additional charge. It is within the domain of Court to frame additional charge or alter an existing charge. It was also held that a revision under Section 397 of Cr.P.C. is not maintainable as against an order passed by the Court below in the application filed under Section 216 of Cr.P.C. in view of the specific bar under Section 397 (2) Cr.P.C. that no Revision could be filed as against an order passed in an interlocutory Petition. Since the present Revision has been filed from the order passed in a similar application, the Criminal Revision Case is not maintainable.

20. Thus, the legal position emanates from the above decisions it that neither the prosecution nor the defacto complainant or any one interested in the criminal case is entitled to file an application under Section 216 of Cr.P.C. and it is only for the Trial Court to decide about framing of an additional charge or alter an existing charge upon arriving at a subjective satisfaction on the basis of existence of materials available on records. It can also be culled out that as against an order passed by the Trial Court in an application under Section 216 of Cr.P.C. a Criminal Revision Case under Section 397 of Cr.P.C. is not maintainable as such an order did not finally determine the prosecution case and it is an interlocutory in nature. Thus, the Trial Court, in the present case, is right in dismissing the application filed by the prosecution under Section 216 of Cr.P.C. for inclusion of an additional charge under Section 302 of IPC against the respondents/accused.

10. As per the decision cited supra, no application under Section 216 is maintainable. The learned Magistrate, after taking into consideration all the evidence has got full discretion whether the charge has to be altered or not. However, in this case, though the learned Magistrate considered the evidence placed before it, unfortunately, in the finding it has stated that no ingredients have been made in the complaint for the offence under Section 420 of IPC. It appears that in the evidence, P.W.1 has stated that at the time of giving complaint, he was not aware that the cheques were not of the

accused. Necessarily, the learned Magistrate has to give a finding with regard to the evidence.

11. In view of such circumstances, I am of the view that the matter requires fresh consideration. Accordingly, the matter is remitted back to the trial Court for fresh consideration. The trial Court shall consider the matter afresh whether any case is made out to alter the charge to Section 420 IPC, after taking into consideration all the evidence, namely, the evidence of PW.1 and P.W2 and thereafter, dispose of the case on merits and in accordance with law, independently, without taking note of any of the observations made by this Court.

12. The Criminal Revision Case is disposed of. Consequently, connected miscellaneous petition is closed.

sd/
ASSISTANT REGISTRAR (CO)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

ga

To

1. The District Munsif - cum - Judicial Magistrate,
Perundurai

+1 CC to MR. N.Manokaran Advocate. SR.NO.54248
+1 CC to MR. L.Mouli Advocate. SR.NO. 54321

Cr1 RC No. 788 of 2011

WEB COPY

CO-BVR
JD 05/11/2015