

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.6.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No.1019 of 2009

T.Arul

.. Petitioner/ complainant

1. Swaminathan
2. Arumugha Pandiyan

vs

.. Respondents

Revision Petition filed under Sections 397 read with Sec. 401 of Cr.P.C. to set aside the order dated 20.8.2009 passed by the learned V Metropolitan Magistrate, Egmore in Crl.MP.No.3025 of 2009 and to take the case on file and issue summons.

For Petitioner : No appearance

O R D E R

On 15.6.2015, when the matter was taken up, there was no representation for the petitioner. The matter was again listed today. Even today, there is no representation for the petitioner. Hence, as per the judgment of the Hon'ble Apex Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka], if the petitioner do not appear, there is no necessity for the Court, which is hearing the matter, to issue warrant for special notice or appoint any Amicus Curiae to argue the matter on behalf of the petitioner. The Court is empowered to deal with the matter on merits and dispose of the same. Accordingly, this matter is taken up for disposal on merits.

2. The petitioner herein is the defacto complainant. The petitioner has preferred a private complaint under Section 200 Cr.P.C. for an offence under Section 420 and 406 IPC and Sections 3 and 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act. According to the petitioner, he is the Distributor of Bharat Gas and he borrowed a sum of Rs.80,000/- from the first accused, who is doing a finance business, and for which the first accused has demanded interest at 30% per month from him at the time of discharge. Therefore, he preferred police complaint and after enquiry, the matter was compromised between the parties. Though the amount was paid by the petitioner/complainant as per the compromise, the first accused has not chosen to return the two signed blank cheques. In the meantime, the first accused handed over the cheques to the second accused, who in turn, filled the same and presented for collection. Since it was dishonored, the second accused preferred a case under Section 138 of the Negotiable Instrument Act against the petitioner and the

same is pending in S.T.C.No.44 of 2008 on the file of the Additional District Munsif, Tenkasi. Hence, the petitioner/complainant filed another police complaint and the same was closed as Civil in nature. Therefore, the present complaint has been preferred, but the learned V Metropolitan Magistrate, Egmore, dismissed the same. Aggrieved over the said order, the petitioner has filed the present petition.

3. The main ground raised in the grounds of revision is that the learned Magistrate failed to appreciate the fact that while filing referred charge sheet they have not stated that the petitioner has not settled the entire amount of Rs.80,000/- to the first respondent but the police has given other reasons that the petitioner has not produced any document to show that he has entrusted the cheque with the first respondent and they have referred the case as civil nature. The petitioner also stated that the first respondent having received Rs.80,000/- ought to have returned the cheque to him based on the compromise but he deliberately handed over the signed cheque to the second respondent, who in turn, presented the same for encashment and since it was dishonored, he preferred a case under Section 138 of the Negotiable Instrument Act against the petitioner. Therefore, according to the petitioner, it is a clear case of cheating.

4. Since the petitioner has not taken notice, there is no representation on behalf of the respondents. I have perused the materials available on record.

5. From the perusal of the records, it appears that the Court below has categorically held that as per the final report in Crime No.264 of 2007, it is admitted that out of the three cheques to the tune of Rs. 80,000/-, one cheque for Rs.30,000/- alone was encashed. The evidence of the Manager of the State Bank of India, Prusawakkam Branch, clearly show that only one cheque was encashed that too for Rs.30,000/-. But it is the case of the petitioner that he repaid the entire amount of Rs.80,000/- which has been clearly disproved by the Manager. The other ground raised by the petitioner that the cheques were misused by the second accused cannot be taken into consideration in view of the clear evidence of the Manager. Hence, as rightly pointed out by the Court below, no prima facie case has been made out by the petitioner.

6. In view of such circumstances, I do not find any reason to interfere with the reasoned order passed by the Court below.

In the result, this Criminal Revision Case is dismissed.

Sd/-

Asst.Registrar (CS IV)

To

1. V Metropolitan Magistrate, Egmore

2. The Public Prosecutor, Madras

RSK[CO]
SRG 22.07

CRL.R.C.No.1019 of 2009



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