

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2015

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

Crl. R.C.No.1262 of 2010

A.Balasubramaniam

... Petitioner/Complainant

vs.

M/s. Mozhi Trading
rep. by its proprietor S.Arulmozhi Selvi
Tirupur.

.... Respondent/Accused

PRAYER : Revision has been preferred under Sections 397 & 401 of Criminal Procedure Code against the order dated 27.08.2010 made in S.T.C.No.2249 of 2010 on the file of the Judicial Magistrate No.I, Tirupur and to set aside the same.

For petitioner : No Appearance

For respondent : No Appearance

O R D E R

This Criminal Revision Petition has been filed against the order dated 27.08.2010 made in S.T.C.No.2249 of 2010 on the file of the Judicial Magistrate No.I, Tirupur.

2. The case of the petitioner/complainant is that the respondent/accused in the course of the business transaction had issued a cheque for Rs.20,000/- to discharge his liability. When the cheque was presented for collection by the complainant, it got dishonoured with an endorsement "insufficient funds". Hence, he has filed a private complaint against the respondent for the alleged offences under Sections 138 and 142 of Negotiable Instruments Act and it was pending trial before the learned Judicial Magistrate No.I, Tiruppur, in S.T.C.No.2249 of 2010. On 28.06.2010, when the matter was called both were absent and fresh summons were ordered to be

issued to the accused and the case was posted on 27.08.2010. On the said day, complainant was not present and he has not taken steps to serve summons on the respondent and hence the private complaint filed under Section 204(4) of Cr.P.C. was dismissed and the respondent was acquitted. Aggrieved against the same, this Criminal Revision Case is filed.

3. On a careful perusal of the order of the Trial Court, it is very clear that the Trial Court has clearly pointed out that when the matter was taken up for hearing on 28.06.2010 and 27.08.2010, the complainant was absent and hence, the private complaint filed under Section 204(4) Cr.P.C. was dismissed, for non-payment of process fee for the service of summons on the accused.

4. At this juncture, it is relevant to refer to Section 204 (4) of Cr.P.C., which reads as under:-

"204. Issue of process

(1) ...

(2) ..

(3) ..

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint. ..."

5. A reading of the above provision makes it clear that if the process fee is not paid within a reasonable time, the Magistrate is vested with power to dismiss the complaint. Here is a case, the petitioner/complainant has not taken proper steps to serve the summons on the accused. Apart from that, it is seen that the complainant has not paid the process fee to the correct address for the service of summons on the accused and therefore, as per Section 204(4) Cr.P.C., the Trial Court has rightly dismissed the private complaint.

6. The revision was admitted on 22.12.2010 and the petitioner/complainant was permitted to take private notice. Thereafter, the petitioner has not taken private notice. Thereafter, the case was posted in 2015. Again, when the matter was taken on 05.06.2015, there was no representation for the petitioner and the matter was adjourned by two weeks and thereafter, when the case was listed on 22.06.2015, there was no representation on the side of the petitioner and the matter was directed to be listed after two weeks under the caption "For Dismissal". Finally, when the matter was called today, there is no representation on both sides. This shows

that the petitioner is not interested in pursuing the matter further. In my considered opinion, the Lower Court has rightly dismissed the private complaint and hence, I do not find any reason to interfere with the reasoned order of the Lower Court. This Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

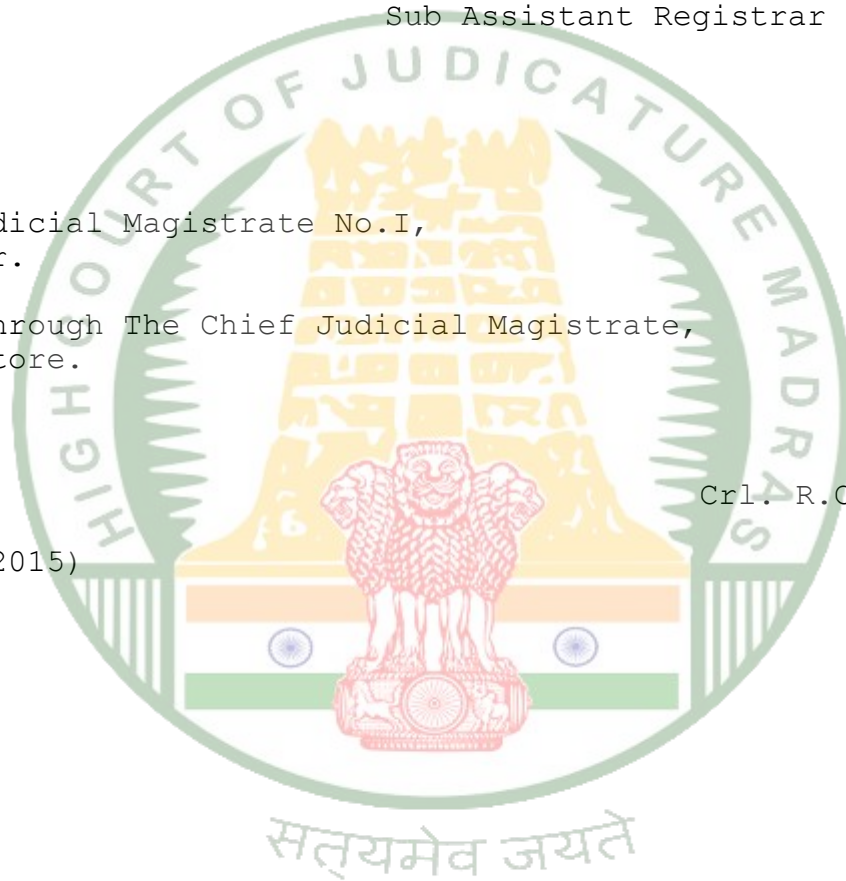
Smi

To

1. The Judicial Magistrate No.I,
Tirupur.
2. -do- Through The Chief Judicial Magistrate,
Coimbatore.

SKV(CO)
CA(07/08/2015)

Cr1. R.C.No.1262 of 2010



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