

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Criminal Revision Case No.202 of 2009

Bangarusamy

.. Petitioner/Accused

Versus

Sultan

.. Respondent/Complainant

Criminal Revision Case filed under Sections 397 r/w 401 of the Code of Criminal Procedure praying to call for the records in Crl.M.P. No. 4940 of 2005 in C.C. No. 346 of 2004 dated 19.12.2008 on the file of Judicial Magistrate No.1, Udumalpet, to set aside the order and allow the Criminal Revision Case.

For Petitioner : Mr. N. Umapathi
For respondents : No appearance

ORDER

The petitioner has come forward with this Criminal Revision Case aggrieved by the order dated 19.12.2008 passed in Crl.M.P. No. 4940 of 2005 in C.C. No. 346 of 2004 on the file of learned Judicial Magistrate No.1, Udumalpet. By the said order dated 19.12.2008,

2. It is seen from the records that one Mohideen Basha has filed a case in C.C. No. 346 of 2004 against the revision petitioner herein under Section 138 of The Negotiable Instruments Act contending that the revision petitioner is known to him and out of the relationship between them, he paid a sum of Rs.1,05,000/- in cash to him as hand loan on 10.09.2003. On receipt of the said sum, the revision petitioner agreed to repay the amount with interest and also executed a promisory note. However, the revision petitioner failed and neglected to repay the amount inspite of repeated demands. On 19.05.2004, the revision petitioner approached the said Mohideen Basha and paid the amount only towards interest as on that date. For repayment of the borrowed amount of Rs.1,05,000/- the revision petitioner issued a cheque dated 19.03.2004 drawn on ICICI Bank, Ulundurpet in favour of the said Mohideen Basha. When the cheque was presented on 22.03.2004 for encashment with State Bank of India, Amaravathy Nagar Branch, it was dishonoured for the reasons funds insufficient and it was intimated to the said Mohideen Basha on 24.03.2004. Therefore, on 27.04.2004, the said Mohideen Basha issued a statutory notice. Even though the notice dated 27.04.2004 was received by the revision petitioner on 28.04.2004, he has not issued any reply notice or repaid the amount. Therefore, the above said C.C. No. 346 of 2004 was filed under Section 138 of The Negotiable Instruments Act.

3. Pending the Calander Case, a memo was filed on behalf of the counsel for the complainant Mohideen Basha on 19.04.2005 stating that the complaint died, however, it is contended that no notice was served on the revision petitioner. .It is further contended that the said Memo was erroneously accepted by the trial court. It is further conended that without amending the complaint under Section 138 of The Negotiable Instruments Act, the power of attorney holder of the legal heirs of the deceased Mohideen Basha was permitted to prosecute the complaint. In such circumstances, the petitioner has filed a Petition under Section 239 of Cr.P.C. to discharge him from the criminal case mainly contending that the complainant, who originally instituted the complaint died and his legal heirs no right to contest the case without filing an application under Section 302 of Cr.P.C. to prosecute the complaint. The trial court dismissed the application for discharge by stating that the death of the original complainant or the non-filing of an application under Section 302 of Cr.P.C. is not a ground to discharge the revision petitioner from the criminal case. Further, the legal heirs have already filed a memo seeking permission to prosecute the complaint and therefore also the application for discharge is liable to be rejected. Accordingly, the trial court dismissed the petition filed by the petitioner for discharge on 19.12.2008, Challenging the above said order dated 19.12.2008, the present Criminal Revision Case is filed.

4. I heard the learned counsel for the petitioner at length. After elaborate argument, the learned counsel for the petitioner prayed this Court to permit the petitioner to raise all the grounds which are raised in this Criminal Revision Case before the trial Court.

5. Having regard to the fact that the trial in the Calander case is pending from 2004 and the counsel for the petitioner is also seeking permission to raise all the grounds which are raised in this Criminal Revision Case only at the time of trial, this Criminal Revision Case is disposed of permitting the petitioner to raise all the grounds which are raised in this Criminal Revision Case at the time of trial in the Calander Case. The trial Court is also directed to expedite the trial and to complete it within a period of three months from the date of receipt of a copy of this order. In the result, the revision is disposed of confirming the lower court order.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.1,
Udumalpet.

2. -do- Thro' The Chief Judicial Magistrate,
Coimbatore.

+ 1 cc to Mr.N. Umapathi, Advocate SR.44578

Crl.R.C. No.202 of 2009

SV(CO)
Eu 24.09.15



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