

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.6.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.266 of 2009

T.N.Angamuthu

.. Petitioner

Versus

Aanoor Balasivasubramaniam

.. Respondent

Revision Petition filed under Sections 397 read with Sec. 401 of Cr.P.C. against the order dated 26.2.2009 passed by the learned District Munsif cum Judicial Magistrate, Kodumudi in C.C.No.167 of 2004.

For Petitioner : Mr. N.Manokaran

ORDER

This revision is filed as against the dismissal of the Private complaint in limine though warrant is pending against the accused.

2. The petitioner herein is the complainant and the respondent is the accused.

3. The petitioner herein has filed the Calendar Case before the Court below under Section 200 Cr.P.C. read with Section 138 of the Negotiable Instrument Act contending that the accused borrowed a sum of Rs.3,15,000/- as hand loan from him on 10.5.2004 and in order to discharge the same, he issued a cheque drawn on The Lakshmi Vilas Bank Ltd., Nathakkadaiyur branch, dated 11.6.2004 for Rs. 3,15,000/-. On presentation of the said cheque, it was returned with an endorsement 'insufficient funds'. Therefore, after issuing statutory notice on 23.6.2004, the petitioner filed the above Calendar case before the Court below. As the accused did not respond to the summons issued to him, Non-bailable Warrant was issued to him. Pending service of the Non-bailable Warrant issued to the accused, the Calendar case filed by the revision petitioner was dismissed on the ground that he has not taken steps for service of the warrant by paying batta. As against this order, the petitioner has come forward with this revision.

4. Notice was ordered to the accused/respondent as early as on 09.6.2009. Even though notice was taken, the same was returned. Thereafter, on 10.6.2015, this Court directed the petitioner to take private notice to the respondent. Accordingly, notice was taken by

the petitioner but the same was also returned as "not claimed". Hence, service is held to be sufficient. The name of the respondent was also printed in the cause list. However, none appears on behalf of the respondent.

5. According to the learned counsel for the petitioner, summary dismissal of the complaint on the ground that steps were not taken to execute the non-bailable warrant by paying batta is not permissible in law. It is submitted by the learned counsel for the petitioner that the respondent is dragging on the matter by wilfully evading the summons, but it was not taken in to account by the trial Court.

6. I heard the learned counsel for the petitioner and perused the materials available on record.

7. It appears that Non-Bailable warrant was issued to the accused for his non-appearance and it could not be executed for want of payment of batta by the complainant. The complaint was not disposed of by the court below on merits but only on the ground steps were not taken for executing the non-bailable warrant issued to the accused. Such an order of dismissal of the complaint under Section 204(4) of Cr.PC, on the face of it, is erroneous and unsustainable. The order of the Court below reads thus:-

"Complainant present. NBW pending against the accused for several hearings. Steps not taken inspite of the time granted. Hence complaint is dismissed under Section 204 (4) Cr.P.C."

8. In this connection, it is useful to refer the unreported judgment of this Court dated 02.3.2015 in the case of T.MANI V. M.JAYADAVID (CRL.R.C.(MD) No.15 of 2015, wherein, in paragraphs 4 and 5, it was held as follows:-

4. A perusal of the order would disclose that the bailable warrant is pending against the accused from 19.11.2012 and together with the process fee, it was forwarded to the Inspector of Police, Thalamuthu Police Station, Tuticorin District, vide endorsement of the learned Judicial Magistrate/Fast Track Court, Tuticorin, on 03.12.2013. Therefore, the dismissal of the complaint under Section 204 Criminal Procedure Code that process fee has not been paid, on the fact of it, is erroneous and unsustainable. On the said ground, the impugned order is liable to be interfere with.

5. In the result, this Criminal revision case is allowed setting aside the impugned order dated 05.12.2014 made in C.C.No.456 of 2012 and C.C.No.456 of 2012 is restored to file. The trial Court is directed to expedite the process of execution of bailable warrant against the accused and expedite the

case by giving preference.

9. Similarly, this Court in ANANDHA VADIVELU V. KANNAPPAN, (2011 (3) MWN (Cr.) (DCC) 87, has observed as follows:

6. The admitted facts are that the respondent/complainant herein has preferred a complaint under Section 138 of Negotiable Instruments Act, against the revision petitioner herein. When the matter was called, the complainant called absent and no representation for him and he has not paid the process. Hence the case was dismissed under Section 204(4) Cr.P.C. for not taking steps and the accused was discharged. Challenging the same, the respondent/complainant preferred a revision in CrI.R.P.No.29/2008, in which, the learned Additional Sessions Judge has considered various decisions, allowed the said revision.

7. Now it is appropriate to incorporate Section 204 Cr.P.C.

204. Issue of process:

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be---

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under Sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section(1) shall be accompanied by a copy of such complaint.

(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) Nothing in this section shall be deemed to affect the provisions of Section 87.

8. It is appropriate to consider the decision of Kerala High Court relied upon by the learned counsel for the respondent/complainant reported in 2007 Cr1.L.J.1143 (Tom Thomas v. Abdul Lathief E.&another) in paragraph-6, it reads as follows:

"6.When there is a specific provision to dismiss a complaint for non-payment of process fees etc., such an order cannot be treated as an order of acquittal. Had the legislature intended that such order will also amount to an order of acquittal, coming within the purview of S.378 of the Code, there was absolutely no difficulty in using the word "acquit" instead of "dismiss" in S.204(4) of the Code. But in the absence of doing so, the only inference possible is that the legislature did not intend to "acquit" an accused for failure of the complainant to pay the requisite fee etc. This Court cannot treat an order of dismissal under S.204(4) of the Code as order of acquittal, against the clear and unambiguous expressions contained in the provision. The order of dismissal of a complaint under S.204(4) is therefore, not appealable under S.378 of the Code. "

As per the above decision, it has clearly proved that the order of dismissal under Section 204(4) Cr.P.C. is not an appealable order. Only a revision is maintainable and the revisional Court considered this aspect and set aside the order.

10. Moreover, as per the judgment of the Hon'ble Apex Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka], the Court below is empowered to deal with the matter on merits and dispose of the same but not in limine.

11. But in the case on hand, the Court below, without going into the merits of the complaint, has dismissed the complaint in limine, which is contrary to the proposition laid down by this Court as well as the Hon'ble Supreme Court in the cases cited supra.

12. Admittedly, the court below dismissed the complaint for not taking steps to pay batta for executing the warrant against the accused. Admittedly, the complainant has also not paid the process fee or summon batta to execute the warrant issued against the accused in the private complaint filed by him. No doubt, for non-payment of process fee, the complaint filed by the complainant can be dismissed as contemplated under Section 204 (4) of Cr.P.C. But in this case, this Court feels that the court below ought to have given one more opportunity to the petitioner for payment of process fee or summon batta especially when the complainant was present on the dates of hearing in the complaint. Even before this Court, notice was sent to

the accused/respondent and his name was also printed in the cause list, but none appears on behalf of the accused/respondent. Even other wise, in such circumstance, the Court below ought to have passed a reasoned order on merits of the complaint, but it was not done.

13. In view of the same, the order passed by the learned District Munsif cum Judicial Magistrate, Kodumudi in C.C.No.167 of 2004 is set aside and the matter is remitted back to the court below for fresh consideration. The learned District Munsif cum Judicial Magistrate, Kodumudi shall decide the matter afresh and dispose of the Complaint filed by the revision petitioner on merits and in accordance with law.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The District Munsif cum Judicial Magistrate
Kodumudi

+1 cc to M/S.N.Manoharan, Advocate sr.31861

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