

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-08-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.313 of 2009

A.P.Rajesh

.. Petitioner

Vs.

V.Chakravarthy

.. Respondent

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order, dated 12.09.2007 made in C.C.No.128 of 2006 on the file of the District Munsif-cum-Judicial Magistrate, Vaniyambodi, Vellore District.

For Petitioner : Mr.E.Kannadasan

For Respondent : No appearance

ORDER

The case of the petitioner/complainant is that the respondent/accused borrowed a sum of Rs.50,000/- as handloan from the petitioner/complainant and failed to repay the same within the stipulated time frame. When the complainant demanded payment, the accused had issued a cheque for Rs.50,000/- to discharge his liability. When the cheque was presented for collection by the complainant, it got dishonoured with an endorsement "Payment Stopped by the Drawer". Hence, the complainant has filed a complaint against the accused for the alleged offence under Section 138 of Negotiable Instruments Act and it was taken on file in C.C.No.128 of 2006 on the file of the District Munsif-cum-Judicial Magistrate, Vaniyambodi, Vellore District. On 12.09.2007, when the matter was called neither the complainant was present nor he has taken steps for payment of process fee in order to take steps to serve summons on the respondent, hence the 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.

2. Mr.E.Kannadasan, learned counsel appearing for the petitioner/complainant would submit that the Trial Court has dismissed the complaint, without giving an opportunity to the petitioner/complainant. He would further submit that the petitioner is absent before the Trial Court on 12.09.2007 as well as he has not taken steps for payment of process fee.

3. Today, when the matter is taken up, there is no representation for the respondent. I have heard the learned counsel appearing for the petitioner and I am inclined to pass the following order after perusing the materials available on record.

4. The petitioner has filed the complaint to launch prosecution against the respondent/accused for having committed the offence under Section 138 of Negotiable Instruments Act. The complaint was filed by the petitioner on 25.08.2006 and it was numbered as C.C. No. 128 of 2006. On presentation of the complaint, the Court below ordered to issue summons to the respondent. On 12.09.2007, when the case was called, the Trial Court found that inspite of time granted to the petitioner, the petitioner/complainant has not chosen to appear before the Trial Court and he has not paid the process fee and he has not taken any steps to cause service of summons on the respondent and therefore, the Trial Court has dismissed the complaint for non-payment of process fee by invoking the powers vested with it under Section 204 (4) of Cr.P.C.

5. 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. ..."

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. Hence, I find that there is nothing wrong in the impugned order dated 12.09.2007. The order passed by the Trial Court stands confirmed. This Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

paa
To

The District Munsif-cum-Judicial Magistrate,
Vaniyambodi,
Vellore District.

+1cc to Mr.E. Kannadasan, Advocate, S.R.No.45548

LRS (CO)
EU(21/09/2015)



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