

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2015

Coram

THE HONOURABLE MR. JUSTICE R.S.RAMANATHAN

Cr1.O.P.No.22646 of 2010

and

M.P.No.1 of 2010

1.Sivaprakasam

2.S.Selvi

..Petitioners/Accused

/vs/

M.Mariappan

..Respondent /Complainant

Criminal Original Petition filed under Section 482 of Criminal Procedure Code praying to call for the records in C.C.No.217 of 2010 on the file of the Judicial Magistrate No.II, Erode and to quash the same.

For Petitioners :Mr.S.Kaithamalaikumaran

For Respondent :Mr.S.N.Thangaraj

ORDER

The accused in C.C.No.217 of 2010 on the file of the Judicial Magistrate No.II, Erode is the petitioner.

2.The respondent filed the above case under Sections 120B, 468, 471 and 420 IPC and after taking sworn statement, the learned Judicial Magistrate has taken cognizance of the case for offence under Sections 138 and 142 of Negotiable Instruments Act and issued summons to the petitioners and the petitioners filed this petition to quash the same.

3.It is submitted by the learned counsel appearing for the petitioners that to attract Section 138 of Negotiable Instruments Act there was no pleadings and it was not stated when the cheque was dishonoured and when the notice was given and in the absence of such dates, it cannot be stated that the complaint was valid as per Section 138 of Negotiable Instruments Act.

4.I am unable to accept the contention of the learned counsel appearing for the petitioners. It is seen from the complaint that the complaint was filed for offences punishable under Sections 120B, 468, 471 and 420 IPC. Sworn statement was also given to that

effect. In the complaint and in the sworn statement, no particulars regarding date on which, the respondent was informed about the dis-honour of the cheque and when he issued notice calling upon the petitioners to make the payment and as per the sworn statement, the respondent has only stated that the petitioners changed signatures and gave the cheque with fraudulent intention to cheat him. Nevertheless the learned Judicial Magistrate has taken cognizance of the case for offence punishable under Section 138 of Negotiable Instruments Act, by order dated 21.05.2010. But, that order is not under challenge and the petitioners sought for quashing of the complaint. Hence, the petition is not maintainable and it is open to the petitioners to challenge the order dated 21.05.2010, by which the Court took cognizance of the case for offence punishable under Section 138 of Negotiable Instruments Act and it is also open to the complainant to move the Court for alteration of charge.

5. With the above observations, the criminal original petition is disposed of. Consequently, connected Miscellaneous Petition is also closed.

Sd/-  
Assistant Registrar

True Copy

Sub Assistant Registrar

ari  
To

1. The Judicial Magistrate No. II,  
Erode.

2.-do- Thro The Chief Judicial Magistrate, Erode

1 cc to Mr. A.K. Kumarasamy , Advocate Sr.No.28966/15

1 cc to Mr. S.N. Thangaraj , Advocate Sr.No.29082/15

सत्यमेव जयते

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