

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2015

CORAM

The Hon'ble Mr. Justice R.S.Ramanathan

CrI.O.P.No.18164 of 2009

and

M.P.No.1 of 2009

1. Manimekalai

2. D.Karikalan

...Petitioners/Accused

vs.

M/s.Anandhi Co.
rep. by its Managing Partner,
N.Manivannan.

...Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for records relating to the case in C.C.No.207 of 2007, on the file of the Judicial Magistrate No.2, Coimbatore, and to quash the same.

For Petitioner : Mr.S.Senthilkumar

For Respondent : Not ready in notice

O R D E R

The petitioners are accused in C.C.No.207 of 2007, on the file of the Judicial Magistrate No.2, Coimbatore.

2. The respondent/complainant filed the abovesaid case under Section 200 of Cr.P.C., against the petitioners, stating that the petitioners have committed offence under Sections 120 B and 420 IPC and this Petition is filed to quash the same.

3. It is submitted by the learned counsel appearing for the petitioner that, earlier, the respondent/complainant filed complaint in C.C.No.232 of 2005, on the file of Judicial Magistrate No.II, Coimbatore against one D.Karikalan, who was the Power of Attorney holder of Sri Sakthi Ganapathy Medicals, for offence under Section 138 of Negotiable Instruments Act (N.I. Act) stating that the accused therein borrowed a sum of Rs.3,50,000/- and issued a cheque dated 31.05.2004, for a sum of Rs.3,67,500 and when the cheque was presented for encashment, it was returned with an endorsement "Exceeds arrangements, and after complying with the legal formalities, the complaint was filed. The learned counsel further

submitted that the complaint in C.C.No.232 of 2005, was dismissed by the Judicial Magistrate No.II, Coimbatore, and thereafter, the present complaint was filed against the petitioners, as if, the petitioners have committed the offence under Sections 120 (b) and 420 IPC, and without appreciating the fact that the earlier complaint in C.C.No.232 of 2005, filed under Section 138 N.I. Act was dismissed, the learned Judicial Magistrate No.II, Coimbatore, had taken cognizance of the present complaint, viz., C.C.No.207 of 2007 and therefore, the present complaint is barred under Article 20 of the Constitution of India, and therefore, it is liable to be dismissed.

4. I am unable to accept the contentions of the learned counsel for the petitioner. It is seen from the judgment rendered in C.C.No.232 of 2005 that, earlier complaint filed by the respondent/complainant was dismissed on the ground that the respondent impleaded only the Power of Attorney of the Drawer of the cheque, and not the Drawer of the cheque, and on that technical ground, the earlier complaint was dismissed. In the present complaint, viz., C.C.No.207 of 2007, the respondent/complainant mentioned the dismissal of the earlier complaint and made out allegations that the accused cheated him, and on that basis, the learned Magistrate has taken cognizance of the case. Therefore, it is amply clear that earlier complaint was filed against the Power of Attorney on the basis of the dishonor of the cheque, and the same was dismissed on the ground that the Power of Attorney cannot be prosecuted in the absence of the Power in C.C.No.232 of 2005, there was no adjudication on merits, viz. whether the cheque was issued for lawful consideration.

5. As stated supra, earlier complaint in C.C.No.232 of 2005, was dismissed on technical ground that the Power of Attorney cannot be prosecuted without prosecuting the Principal. Whereas, in the present complaint, viz., in C.C.No.207 of 2007, allegations are made against the petitioners, as if, they have committed offence of cheating, and the averments in the earlier complaint and in the present complaint are different and the respondent/accused in both the cases are different. Further, in the earlier complaint, i.e., in C.C.No.232 of 2005, proceedings were initiated under Section 138 of N.I. Act against the Power Agent, and in the present complaint, C.C.No.207 of 2007, proceedings were initiated against the petitioners for having committed offence under Sections 120 B and 420 IPC. Whether the petitioners have committed offence under Sections 120 B and 420 IPC or not, can be determined only during trial and the present Criminal Original Petition cannot be allowed on the ground that the earlier complaint filed by the respondent/complainant was dismissed.

6. Hence, I do not find any merit in this Criminal Original Petition, and therefore, it is dismissed. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.2, Coimbatore,
2.-do- Thro The Chief Judicial Magistrate, Coimbatore.

3.The Public Prosecutor, High Court, Madras.

1 cc to Mr.G.Ponnambala Thiyagarajan , Advocate Sr.No.26626

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ug(co)
pmk.22.6.2015



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