

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2016

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

Crl.R.C.No.128 of 2011

P.Karuppannan

.. Petitioner

M.K.Venkatachalam

Vs

..

Respondent

Prayer:- Criminal Revision filed under Section 397 & 401 Cr.P.C., praying to call for the records and set aside the order passed in Cr.M.P.No.5822 of 2010 on the file of the Judicial Magistrate No.I, Namakkal dated 11.11.2010 and direct the Learned Magistrate to take the complaint on file.

For Petitioner : Mr.S.Bageerathan

For Respondent : Mr.T.Dhanyakumar

O R D E R

This Revision Petition has been directed at the instance of the complainant in a cheque bouncing case as against the dismissal of his complaint by the learned Judicial Magistrate No.I, Namakkal in Cr.M.P.No.5822 of 2010 on 11.11.2010.

2. In his private complaint, the revision petitioner had alleged that the respondent has borrowed Rs.7,00,000/- from him on 10.08.2010 and issued him a cheque drawn on The Lakshmi Vilas Bank Ltd., Namakkal. He also alleged that when the cheque was put into collection, it was returned as no account is existing. In spite of the statutory notice and time, the respondent has not paid the amount.

3. In the circumstances, under Section 200 Cr.P.C., the revision petitioner has filed a complaint in the Court of the learned Judicial Magistrate-I, Namakkal. The learned Judicial Magistrate received the complaint in Cr.M.P.No.5822 of 2010.

4. On 11.11.2010, the learned Magistrate dismissed the complaint under Section 203 Cr.P.C. on the ground that Account Number does not exist will not give cause of action and the firm also has not been impleaded.

5. The learned counsel for the revision petitioner
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contended that in spite of satisfying all the requirements for an offence under Section 138 of Negotiable Instrument Act, the learned Judicial Magistrate had failed to take cognizance and issued summons to the accused. The learned Magistrate also has not considered the allegations in the complaint and other materials produced. The learned counsel would also contend that in Paragraph 2 of the order, the learned Magistrate has cited seven citations, which are not relevant to the issue and there is no discussion as to the applicability of those decisions to the present case. The learned counsel has also contended that the learned Judicial Magistrate has simply dismissed the complaint without applying his judicial mind.

6. On the other hand, the learned counsel for the respondent would contend that the learned Judicial Magistrate, considering all the aspects of the case after giving brief reasons has dismissed the complaint.

7. I have anxiously considered the rival submissions and perused the impugned order and the materials on record.

8. Now, the question is whether the impugned order suffers from any legality, propriety, regularity and whether it is a perverse.

9. This matter arose out of a cheque bouncing case. As per the complaint, as between the revision petitioner and the respondent, there was money transaction. It is a case of issuance of cheque to discharge a legally recoverable debt. The amount stated to have been borrowed by the respondent from the revision petitioner is Rs.7,00,000/-.

10. A cheque has been issued by the respondent, which has been drawn at the Lakshmi Vilas Bank, Namakkal. The Bank Account was closed. The cheque bounced. There was issuance of statutory notice.

11. Under Section 138 of the Negotiable Instruments Act, the required ingredients are issuance of cheque towards a legally recoverable debt without keeping sufficient funds in his bank account and after receiving intimation from the banker, issue of statutory notice by the complainant to the accused giving him the required time, however, even after expiry of the required time, the accused has failed to pay the cheque amount.

12. It is purely a private complaint case. The complainant has to prefer a complaint under section 200 of Cr.P.C to the Court of Judicial Magistrate. The learned Magistrate has to find out existence of a prima facie case. He has considered the allegations in the complaint with regard to the commission of the offence, sworn statement of the complainant, his witnesses, if any, and the documents produced. If, he finds a prima facie case for an offence

under Section 138 of the Negotiable Instruments Act, he shall take cognizance under Section 190(1)(a) Cr.P.C. and issue summons to the accused under Section 204 of Cr.P.C. If there is no basis or no sufficient ground to proceed, the Magistrate has to dismiss the complaint under Section 203 of Cr.P.C., however, after giving brief reasons for so doing. But at this stage, the Magistrate is not required to assess the weight or otherwise of the said materials.

13. In the instant case, the learned Judicial Magistrate has not considered the sworn statement of the complainant and other materials in proper perspective. He seems to have approached the complaint as is at the final stage of the case. Actually, the learned Judicial Magistrate has conducted trial at the stage of Section 200-202 Cr.P.C. enquiry stage itself. The impugned order suffers from legality and propriety. It calls for our interference.

14. In the circumstances,

(1) This Criminal Revision is allowed.

(2) The impugned Order of the learned Judicial Magistrate-I, Namakkal passed in Cr.M.P.No.5822 of 2010 dated 11.11.2011 is set aside.

(3) The said Magistrate will consider the allegations in the complaint and the sworn statement of the complainant and his witnesses, if any, and the documents afresh and pass fresh orders in accordance with law, within three weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

rm/Svn

To

1.The Chief Judicial Magistrate ,
Namakkal.

2.Judicial Magistrate No.I,
Namakkal.

1 cc to Mr.C. Kasirajan, Advocate, Sr. 58346

1 cc to Mr.T.Dhanyakumar, Advocate, sr. 57784

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