

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

Cr1.R.C.No.259 of 2011

Mariyappan

.. Petitioner/Complainant

Vs.

T.Baskar

.. Respondent/Accused

This Criminal revision is filed under Section 379 & 401 of Cr.P.C., against the order passed by the Judicial Magistrate No.I, Nagapattinam in S.T.C.No.197 of 2008, dated 23.9.2010.

For Petitioner : Mr.S.Vadivel Murugan

For Respondent : Mr.S.Soundhar

O R D E R

In this revision, a complainant in a cheque bouncing case challenges the dismissal of his complaint and the discharge of the accused.

2. The revision petitioner filed a private complaint under Section 200 Cr.P.C. as against the respondent alleging his commission of an offence under Section 138 of N.I. Act. The learned Judicial Magistrate No.I, Nagapattinam after enquiry conducted under Sec.200 Cr.P.C. took cognizance thereon in S.T.C. No.197 of 2008 and issued summons to the respondent under Sec.204 Cr.P.C.

3. On 23.9.2010, the learned Magistrate passed the following impugned order, ultimately discharged the accused from the case.

"Both parties called absent. NBW pending. No representation is also made. Steps not taken. The case is pending from 8 hearings being the case summary nature. Hence, the complaint is dismissed for non prosecution. The NBW recalled accused is discharged."

4. The learned counsel for the revision petitioner would contend that the order of the learned Magistrate is unsustainable in law because it is not in accordance with law. For no fault of the complainant, the accused has been discharged who was already absconding and NBW was also pending against him.

5. The learned counsel for the respondent supports the impugned order of the learned Magistrate.

6. I have anxiously considered the rival submissions, the impugned order and the entire materials on record.

7. In a cheque bouncing case, the offence under Sec.138 N.I. Act is bailable offence. The Magistrate has to follow private complaint procedure prescribed for trial of a summons case.

8. For the absence or death of a complainant, such complaint can be dismissed. But such a complaint cannot be dismissed for the absence of the accused. Complaint cannot be dismissed for the abscondance of the accused when NBW is pending against him. A complaint cannot be dismissed on the ground that no steps has been taken by the complainant to execute the NBW because under the Code of Criminal Procedure, NBWs are addressed to the police for execution. Steps to execute NBW for apprehending the accused has to be taken by the police and not by the complainant.

9. In this case, the accused is absconding, NBW was also pending. In such circumstances, the case cannot be proceeded with because no evidence shall be recorded by the trial Court in the absence of the accused. When NBW is pending in a private complaint case, question of conducting the trial will not arise. From the above, it is very clear that the impugned order passed by the trial Court is unsustainable in law.

10. In view of the foregoing, ordered as under:

(1) This revision is allowed.

(2) The impugned order passed by the learned Judicial Magistrate No.I, Nagapattinam in S.T.C. No.197 of 2008 is set aside.

(3) The said Magistrate will restore the complaint in S.T.C.No.197 of 2008 to his file.

(4) The said Magistrate will fix a hearing date and issue summons to the revision petitioner/ complainant.

(5) The learned Magistrate will also take steps to enforce the attendance of the accused by directing the police to execute the N.B.W. in accordance with law.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1 The Chief Judicial Magistrate,
Nagapattinam

2 The Judicial Magistrate No.I,
Nagapattinam

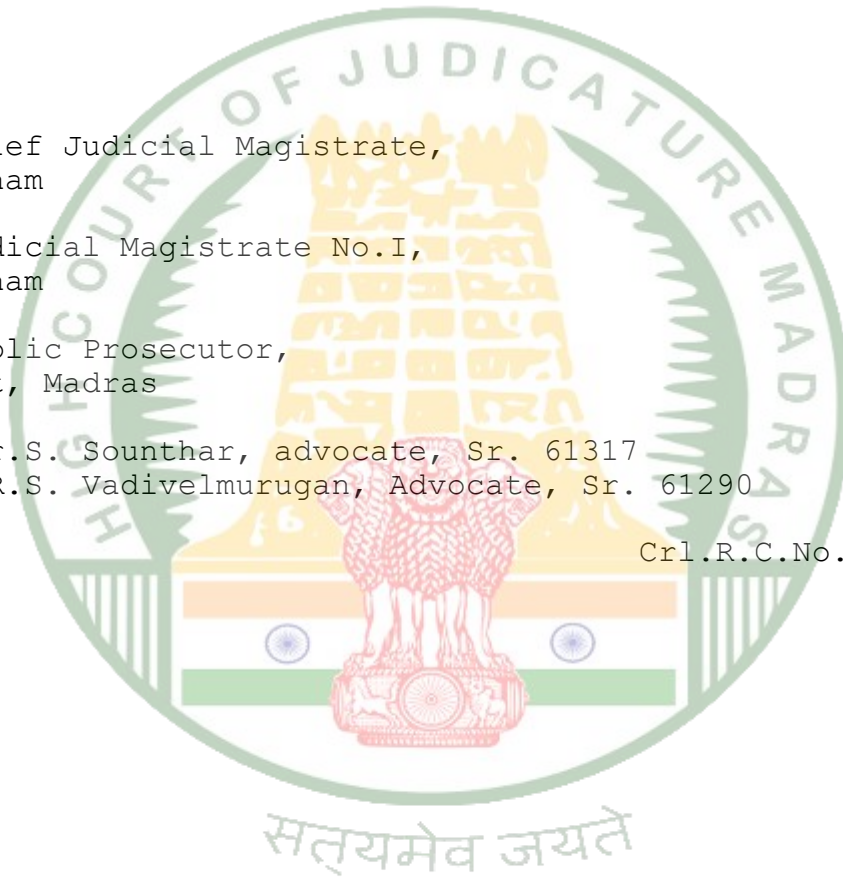
3. The Public Prosecutor,
High Court, Madras

1 cc to Mr.S. Sounthar, advocate, Sr. 61317

1 cc to MR.S. Vadivelmurugan, Advocate, Sr. 61290

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CNR (CO)
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