

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

CrI.R.C.No.368 of 2011

Saritha Mittal  
Proprietrix,  
M/s.Vishnu Ispat Udyog  
Rep. by Power of Attorney .. Petitioner/Complainant  
Rajesh Mittal

Vs.

K.Jayabal ... Respondent/Accused

This Criminal revision is filed under Section 397 r/w 401 of Cr.P.C., against the order, dated 25.11.2010 in C.C.No.14899 of 2007 on the file of the VII Metropolitan Magistrate, George Town, Chennai.

For Petitioner : Mr.S.S.Swamidoss Manokaran  
For Respondent : Mr.Bharathiraja

O R D E R

This revision has been directed by the Complainant in C.C.No.14899 of 2007 as against the dismissal of his complaint by the learned VII Metropolitan Magistrate, George Town, Chennai.

2. The respondent is being prosecuted before the said Court for an offence under Sec.138 N.I. Act. It is a cheque bouncing case. The cheque amount is Rs.2,69,660/-. The accused defended the case himself through a lawyer.

3. On 25.11.2010, the learned Magistrate while dismissing the complaint held as under:

"Complainant absent for the past 3 hearings. No representation. Accused present. Trial stage. Matter is pending from the year 2007. Already final notice sent to complainant on 21.1.2010. Thereafter, complainant appeared 2 times. Without proceeding trial then from 11.6.2010 neither

complainant nor counsel appeared without cooperation either from Complainant or from counsel. This Court not able to proceed the matter further. Final notice already issued to complainant but neither complainant nor counsel appeared even today. Hence complaint is dismissed.''

4. The learned counsel for the revision petitioner contended that the learned Magistrate purported to have passed an order under Sec.256 Cr.P.C. Under Sec.256 Cr.P.C., in the event of death or absence of Complainant, an order of acquittal only could be passed and complaint cannot be dismissed. Thus, the impugned order suffers from legality.

5. The learned counsel for the revision petitioner further contended that no final notice as stated in the impugned order received by the revision petitioner/Complainant. There is no proof to show that such a notice has been served upon the Complainant.

6. The learned counsel for the revision petitioner further contended that the bailable warrant issued to the accused has been recalled under Sec.70(2) Cr.P.C. Thereafter, on the next hearing, the learned Magistrate passed the impugned order dismissing the complaint. In the facts and circumstances, the learned Magistrate could have given an opportunity to the Complainant.

7. The learned counsel for the revision petitioner contended that as per Section 256 Cr.P.C., it is not in every case that on account of absence of the Complainant, the learned Magistrate has to acquit the accused under Section 256 Cr.P.C. Discretion has been given to the learned Magistrate to adjourn the case in appropriate cases giving an opportunity to the complainant. In the facts and circumstances, the learned Magistrate could have exercised his discretion.

8. The learned counsel for the revision petitioner submits that the complainant has no intention to drag on the proceedings.

9. The learned counsel for the respondent/accused would submit that the proceedings before the trial Court would clearly depicts the Complainant has no intention to prosecute her case. Her intention is to avoid the trial. She is very much interested in drag on the trial proceedings. The trial Court lost its patience. In such circumstances, the trial Court has taken the whip and axed the complaint. In the facts and circumstances, the complainant does not deserve any opportunity.

She has to be blamed for her own folly.

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

11. Section 256 Cr.P.C. deals with death and absence of the complainant. Death of the complainant is not within our hands. But presence and absence are within our hands. Wifull absence cannot be sponsored. But mere absence with acceptable reasons can be countenanced. That is why, Section 256(1) Cr.P.C. on the one hand enables the Court to axe the complaint (Section 256(1) Cr.P.C.) and acquit the accused and on the other hand, it gives discretion to the Court in appropriate cases instead of axing the complainant to give an opportunity to the accused (See Proviso to Section 256(1) Cr.P.C.) This is for bonafide cases. Malafide cases will never be accommodated under Sec.256 Cr.P.C.

12. Cheque bouncing cases have become field for hide and seek. Both the complainant and the accused has the potentiality to do it, use the Court as their playground.

13. The accused will have the tendency to dodge the trial. Equally, complainant also will do it in order to fleece/extract money to the extent possible from the accused. The Complainant will see that the accused should suffer in Court and under such a situation extract money from the accused. These are unavoidable casualties in the Magistrate Courts. In the midst of these casualties the Court shall do justice to both. Be as it may.

14. Now, we shall revert back to our case.

15. A close scanning of case records would reveal that there is no material to sustain the premises of the learned Magistrate that a final notice has been served upon the complainant. That apart, in the facts and circumstances of the case, the learned Magistrate could have given an opportunity to the complainant.

16. In view of the foregoing, it is ordered as under:

- (1) This revision is allowed.
- (2) The impugned order passed by the learned VII Metropolitan Magistrate, George Town, Chennai in C.C.No.14899 of 2007 on 25.11.2010 is set aside.
- (3) The learned Magistrate shall restore C.C.No.14899 of 2007 to his file.

- (4) The learned Magistrate will proceed to try the

said case expeditiously and dispose of the same according to law after giving reasonable opportunity to both sides.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1 The VII Metropolitan Magistrate, Geroge Town, Chennai
- 2 Do thro the Chief Metropolitan Magistrate, Egmore, Chennai 8
- 3 Copy to: The Section Officer, Crl. Section, High Court, Madras

+1cc to Mr.J. Bharathiraja, Advocate, S.R.No.68445

+1cc to Mr.S. Swamidoss Manokaran, Advocate, S.R.No.68031

mn (CO)

md (09/12/2016)

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