

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2017

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THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

CRL.RC. No.564 of 2017

R.K.Dhanasekar ... Petitioner

Vs.

P.Thulasiraman ... Respondent

Prayer: The Criminal Revision Case has been filed under Section 374 of the Code of Criminal Procedure praying to set aside the order dated 18.01.2017 made in C.C.No.260 of 2015 on the file of the Judicial Magistrate No.I, Vellore.

For Petitioner : Mr.P.Chandrasekar

For Respondent : Mr.J.Deveshwaar

ORDER

This Criminal Revision Case has been filed against the order passed by the learned Judicial Magistrate No.I, Vellore in C.C.No.260 of 2015 by order dated 18.01.2017.

2. The petitioner herein, filed a private complaint under Section 200 of Cr.P.C.to take on file, such complaint against the respondent for the alleged offence under Section 420 of I.P.C.

3. According to the petitioner, the respondent has borrowed a sum of Rs.6,00,000/- for urgent business and family requirements on 01.09.2013 and 03.12.2014 and in order to repay the same, the respondent has given a cheque to the petitioner for Rs.6,00,000/- on 14.12.2014.

4. When the said cheque was presented, it was dishonoured. Therefore, after issuance of statutory notice, the petitioner had filed a complaint under Section 138 of Negotiable Instrument Act before the learned Judicial Magistrate, Arni in C.C.No.20 of 2015 for the offence under Section 138 of Negotiable Instrument Act and the said case is pending trial before the said Court.

5. However, subsequently, the petitioner had filed the present complaint alleging that the accused has committed an offence under Section 420 of I.P.C. Though initially trial Court has taken such complaint on file C.C.No.260 of 2015 and the petitioner was examined as P.W.1 on 06.04.2016,

however, he wants to produce some more documents after obtaining it from Magistrates' Court, where the petitioner's complaint under Section 138 of Negotiable Instrument Act was pending.

6. As the petitioner has not produced any such document and he has not chosen to examine the witnesses on his side, the trial Court has closed the evidence on the petitioner's side on 06.01.2017.

7. However, the trial court has found that the said complaint was filed for the offence under Section 420 of I.P.C. and further instituted criminal prosecution against the accused for the very same reason of dishonour of cheque. Further, in the evidence of P.W.1, it seems to have been stated that even after filing the case under Section 138 of Negotiable Instrument Act, the respondent has chosen to send repeated notice to the petitioner and thereby, the petitioner is subjected to mental agony. Therefore, he has filed the present complaint for the alleged offence under Section 420 of I.P.C., against the petitioner.

8. On perusal of the materials available on record, it is seen that the petitioner himself has deposed before the Court below that the complaint was filed not with good intention but only to harass the respondent for the

cognizable offence under Section 420 of I.P.C. Therefore, on that ground, the Trial Court has come to the conclusion that the complaint was filed with a malafide motive and accordingly, the present impugned order was passed for discharging the accused from the charges, under Section 245(2) of Cr.P.C., Aggrieved by the said order, the present revision has been filed.

9. I have heard Mr.P.Chandrasekar, learned counsel appearing for the petitioner and Mr.J.Deveshwaar, learned counsel appearing for the respondent and also have perused the materials placed before this Court.

10. It is an admitted fact that the petitioner has already filed a complaint under Section 138 of Negotiable Instrument Act before the Magistrate court, Arni, where the said complaint is pending for trial.

11. The present complaint has also been filed by the petitioner for the alleged offence under Section 420 of I.P.C. The trial Court had completed the evidence of P.W.1 and the petitioner has not shown any interest in examining the other witnesses for several months. Moreover, P.W.1 i.e., petitioner has deposed before the trial Court that even after filing the complaint under Section 138 of Negotiable Instrument Act, the respondent started giving notices and by that, the petitioner is subjected to mental agony and therefore,

the petitioner has filed the present complaint.

12. If that is the intention of the petitioner to file the present complaint invoking Section 200 Cr.P.C., certainly the conclusion arrived by the learned Magistrate cannot be found fault with.

13. Moreover, the learned counsel appearing for the petitioner would also submit that after issuance of the cheque, the respondent blocked the bank account from which, the cheque was given. Therefore, the action on the part of the respondent, according to the learned counsel for the petitioner, would amount to an action which can be construed for the offence punishable under Section 420 of I.P.C.

14. This Court is not agreed with the said contention and the reasons stated by the learned counsel for the petitioner for filing the present complaint before the trial Court.

15. If at all the respondent blocked or closed his account that cannot be construed that it is only to defeat the alleged claim of the petitioner, such an action was taken by the respondent. Assuming the said action had been taken by the respondent, it may be for the purpose of protecting himself from any other financial thread and therefore, the same cannot be considered to be

an action punishable within the meaning of Section 420 of I.P.C.,

R.SURESH KUMAR,J

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therefore, in the above said circumstances of this case, this Court is of the considered view that there could be no flaw in the order passed by the trial Court which is assailed herein and hence, this court is of the considered view that there is no requirement to interfere with the impugned order.

Accordingly, this criminal revision fails and the same is dismissed.

16.08.2017

Index:Yes/No
Internet:Yes/No
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To

The Judicial Magistrate No.I,
Vellore.

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