

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.01.2017

CORAM

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Cr1.O.P. No.23176 of 2010
& M.P.Nos.1 & 2 of 2010

1. M/s.B.V.V.Paper Industries Limited,
Rep. by its Chairman
B.V.Sathiya Narayana Moorthy,
148-D, Palani Road,
Udumalpet - 642 128.
Coimbatore District.
2. B.V.V.S.S.Krishna Prasad,
Managing Director,
M/s.B.V.V.Paper Industries Limited,
148-D, Palani Road,
Udumalpet - 642 128.
Coimbatore District. ... Petitioners/Accused 1&3

versus

R.Balasundaram,
Proprietor,
R.Balasundaram Waste Paper Mart,
No.39, Ponniammann Koil Street,
Kottur, Chennai - 600 085. ... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482
Cr.P.C. to call for the records in C.C.No.1171 of 2003 on the
file of the learned IX Metropolitan Magistrate, Saidapet,
Chennai in so far as A-1 and A-3 are concerned and quash the
proceedings.

For Petitioners : Mr.B.Natarajan
For Respondent : Mr.K.R.Ramesh Kumar

O R D E R

This Criminal Original Petition has been filed by the
petitioners to quash the proceedings in C.C.No.1171 of 2003 on
the file of the learned IX Metropolitan Magistrate, Saidapet,
Chennai in so far as A-1 and A-3 / petitioners are concerned.

2.The petitioner has been arraigned as A-1 and A-3 in C.C.No.1171 of 2003 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai. It is a private complaint filed by the respondent in terms of Section 200 of the Code of Criminal Procedure, 1973 for an offence punishable under Section 138 of the Negotiable Instruments Act.

3.The first petitioner is a Company and the second petitioner is the Managing Director of the Company. This Court by an order dated 21.12.2009 in CrI.O.P.No.20009 of 2003 quashed the criminal proceedings as against the fourth accused.

4.The learned counsel appearing for the petitioners would submit that the learned IX Metropolitan Magistrate, Saidapet, Chennai, ought not to have proceeded to hear the complainant's witnesses under Section 254 Cr.P.C. without complying with the mandatory provisions of Section 251 Cr.P.C. Section 251 Cr.P.C. reads as follows:

"251.Substance of accusation to be stated.
When in a summons- case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge."

5.A plain reading of the Section would reveal that the Court must not only state the particulars of the offence but also the questioned the accused whether he pleads guilty or has any defence to make.

6.It is conceded by the learned counsel for the respondent that the procedure contained in Section 251 Cr.P.C. has not been followed in this case before taking evidence. But the omission to state particulars of the offence to the accused would not be a ground to quash the entire proceedings. The proper procedure would be to comply with the procedural requirement and then dispose of the case in accordance with law. It is said that the evidence has already been recorded. The learned counsel for the petitioner has also pointed out that he has not received the copies of the complaint and other documents relied on by the complainant. The learned counsel for the respondent is willing to furnish the copies of the complaint and other documents to the petitioner.

7.In the light of the above, this Court is inclined to direct the learned IX Metropolitan Magistrate, Saidapet, Chennai to comply with the provisions of Section 251 Cr.P.C. and dispose

of the case in accordance with law expeditiously. The evidence already recorded is ordered to be eschewed.

8.In the result, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS-IV)

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Sub-Assistant Registrar

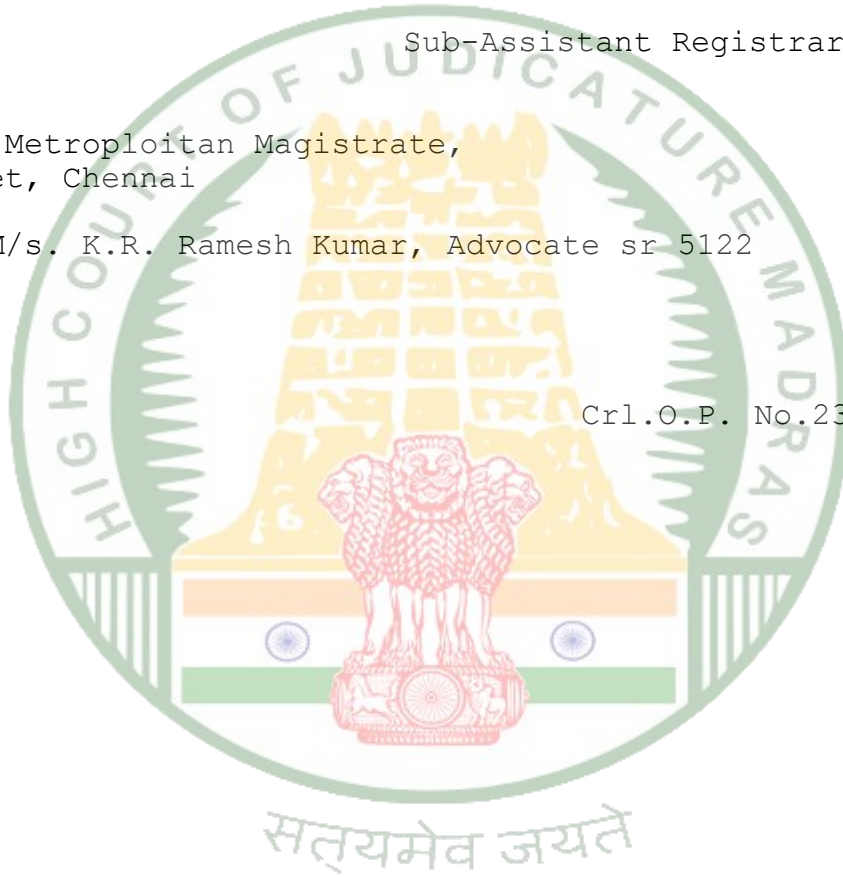
To

1. The IX Metroploitan Magistrate,
Saidapet, Chennai

+1 CC to M/s. K.R. Ramesh Kumar, Advocate sr 5122

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CNR(CO)
sp/17/2



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