

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.01.2017

CORAM

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

CrI.O.P. No.16317 of 2010
& M.P.No.1 of 2010

Manager,
Canara Bank,
Madathukulam Branch,
17-C, Main Road,
Madathukulam,
Coimbatore - 642 113. ... Petitioner

versus

N.Bose ... Respondent

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.78 of 2010 on the file of the Judicial Magistrate No.II, Udumalaipet and quash the complaint against this petitioner.

For Petitioner : Mrs.G.Shanthi Meenakshi
For Respondent : Mr.L.Mouli

O R D E R

This Criminal Original Petition has been filed by the petitioner to quash the proceedings in C.C.No.78 of 2010 on the file of the learned Judicial Magistrate No.II, Udumalaipet.

2.The respondent is the complainant in C.C.No.78 of 2010 on the file of the learned Judicial Magistrate No.II, Udumalaipet. It is a private complaint preferred by the respondent under Section 200 Cr.P.C. for the offences punishable under Sections 420 and 167 IPC.

3.The respondent opened a Savings Account with the Canara Bank, Madathukulam Branch, Udumalaipet Taluk. His Savings Bank Account Number is 15331. He opened the account on 22.12.1997. The Bank has issued passbook to him. The petitioner alleged in the complaint that a sum of Rs.30,000/- was available in his account as on 23.11.2009. He tendered withdrawal form along with passbook for withdrawal of Rs.30,000/- on 23.11.2009. He was

informed by the Bank that he has withdrew Rs.30,000/- on 01.09.2009 and only Rs.7,000/- was available in his account. According to the complaint, he has not withdrawn Rs.30,000/- on 01.09.2009. His complaint is that his money was clandestinely taken away by someone by way of impersonation and forgery with the complicity of the officials of the Bank.

4.The learned Magistrate took the case on file for the offences under Sections 420 and 167 IPC and issued summons to the petitioner, namely, "Manager, Canara Bank, Madathukulam Branch, Udumalpet". Thereafter, the Manager approached this Court by way of this Criminal Original Petition seeking to quash the complaint.

5.The learned counsel for the petitioner would submit that the petitioner has withdrawn Rs.30,000/- on 01.09.2009 by tendering withdrawal form and it was honoured. However, entries could not be made in the Passbook owing to the absence of leave of the Clerk concerned. Taking advantage of the fact that there was no entry in the passbook, the respondent started making claims that the withdrawal form for Rs.30,000/- did not bear his signature. The admitted signature of the respondent and the signature contained in the said withdrawal form were compared by a Handwriting Expert. He found that the signatures in the disputed withdrawal slip was that of the respondent. Thereafter, the respondent made a complaint to the police. Subsequently, the present complaint has been prepared. According to the learned counsel for the petitioner, the complaint does not disclose any offence against the petitioner and therefore, the learned Magistrate was not right in taking the case on file and issuing summons to the petitioner.

6.The learned counsel for the respondent would submit that the learned Magistrate has taken cognizance of the offences and thereafter, issued summons to the petitioner and that the Magistrate can summon any person as an accused under Section 319 Cr.P.C. at a later stage and therefore, the complaint need not be quashed at this stage.

7.The learned counsel for the petitioner relied on the following decisions to submit that the allegations in the complaint do not prima facie constitute any offence against the petitioner and therefore, the complaint is liable to be quashed.

- "[i] M/S.GHCL EMPLOYEES STOCK OPTION TRUST vs. M/S. INDIA INFOLINE LIMITED AND OTHERS [CDJ 2013 SC 237]
- [ii] HARVINDER SINGH vs. STATE [CDJ 2015 DHC 197]
- [iii] UDAY KOTAK AND OTHERS vs. G.D.FOODS MFG. (I) PVT. LTD. [CDJ 2015 DHC 626]

[iv] GOLD MOHUR FOODS & FEEDS LIMITED AND OTHERS vs. THE STATE OF JHARKHAND AND ANOTHER [CDJ 2014 JHAR HC 096]"

8.It is clear from the above decisions that if the complaint on the face of it does not disclose the commission of an offence, the High Court in its jurisdiction under Section 482 Cr.P.C. can quash the same. The defence of the accused cannot be considered at this stage.

9.A careful perusal of the complaint would show that it is not even the case of the complainant that the Manager (petitioner) has committed the alleged offences of impersonation and forgery. It is significant to note that the complaint is not against any specific individual. The complaint is also not against the Bank as a corporate body. It is to be seen whether the complaint would lie against the Manager of the Bank. The post of Manager cannot be construed as a person within the meaning of "person" as defined under Section 11 of IPC. Therefore, the Magistrate is not correct in issuing summons treating the post of Manager as an accused. The order of the Magistrate summoning the petitioner is liable to be quashed.

10.However, the Magistrate has taken cognizance of the offences on the basis of the allegations made in the complaint. There is a specific allegation in the complaint that the complainant's signature has been forged by someone and his money has been taken away. Thus, the complaint makes out prima facie offences and quite rightly cognizance has been taken by the Magistrate. Therefore, the complaint deserves to be dealt with according to law.

11.The term "complaint" has been defined by the Code of Criminal Procedure under Section 2(d) and it "means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report." Therefore, the complaint cannot be quashed merely on the ground that the name of the offender is not mentioned in the complaint. It is well settled that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage. Issue of process under Section 204 of Cr.P.C. comes into play after taking cognizance. As has already been pointed out that the allegations in the complaint are not against any specific individual. Therefore, it is for the Magistrate to hold an inquiry either by himself or direct an investigation in terms of

Section 202 Cr.P.C. to find out the offenders and bring them to book in accordance with law.

12.With the above observations, this Criminal Original Petition is allowed in part. The order of the learned Magistrate dated 16.04.2010 issuing summons to the petitioner is quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sri

To

- 1.The Judicial Magistrate No.II,
Udumalaipet.
2. -do- Throgu The Chief Judicial Magistrate, Nilgiris.
- 3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.L. Mouli, Advocate, S.R.No.1546

GJ(CO)
EU 30.1.17

सत्यमेव जयते

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