

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl. Revision Case No.274 of 2018

P.Balamurali

... Petitioner

vs

1.Citi Corp.Finance Private Ltd.,
City Corp.Finance (India) Ltd.,
Registered Office at 9th Floor,
Aeropolis, New No.148, Old No.68,
Dr.Radhakrishnan Salai,
Chennai 600 004.

2.The Managing Director (A2),
Citi Corp.Finance (India) Ltd.,
Registered Office at 9th Floor,
Aeropolis, New No.148, Old No.68
Dr.Radhakrishnan Salai,
Chennai 600 004.

3.Balasubramani

4.Karthick

.... Respondents

Prayer : Criminal Revision Petition filed under Section 397 read with 401 of the Code of Criminal Procedure praying to call for the records in C.C.No.234 of 2017 on the file of the Judicial Magistrate No.II, Tiruppur dated 24.11.2017 and to set aside the same and to direct the Magistrate to contest the case.

For Petitioner : Mr.A.Raman

ORDER

This revision has been filed to set aside the order passed by the learned Judicial Magistrate No.II, Tiruppur made in C.C.No.234 of 2017 dated 24.11.2017.

2. According to the petitioner, he availed loan from the accused three loan agreements dated 01.11.2006. The loan agreement commenced from 01.12.2006 to 30.11.2010. At the time

of expiry of the loan agreement, the petitioner remitted Rs.58,28,022/- instead of Rs.58,63,482. Subsequently, the petitioner requested the respondents to submit the original and final settlements of the loan accounts. The respondents furnished a final settlement dated 17th June 2013 for all the three loan agreements and he has to pay a sum of Rs.35,460/- in respect of the loan account No.4745946 and the other two loan agreements have been settled. The respondents moved the Sole Arbitrator and obtained an exparte award dated 07.04.2010. The date of Award is three years prior to 17.06.2013 the date on which, the respondents gave the final settlement to the petitioner and collected the due and outstanding amount of Rs.35,460/-. The respondents collected money during the arbitration proceedings and after passing of the Award. The respondent filed Execution Petition before the District Court in A.O.P.No.4 of 2010 in E.P.No.2 of 2013 and the same was dismissed for default. If the petitioner has not paid the amount, the respondents 2 and 3 has not returned the original certificates to the petitioner. Hence, the petitioner was filed the case in C.C.No.234 of 2017 on the file of the learned Judicial Magistrate No.II, Tiruppur and the same was dismissed. It is made clear from the complainant's case that there was a civil dispute over the outstanding loan amount and the same has to be settled in civil forum in a manner known to law. Further, there is no necessity for the petitioner to move any civil forum in respect of the dispute of the due as no cause of action arises. Hence, the petitioner has filed the present criminal revision before this Court.

3. It appears from the records that the learned VIII Metropolitan Magistrate has passed the orders by dismissing the complaint under Section 203 of Cr.P.C. Section 203 of Criminal Procedure Code provided as follows:

"203. Dismissal of complaint. - If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

As per the procedure of Section 203 of Cr.P.C., the learned Magistrate should act that after taking the complaint on file, he should record the statement on oath of the complainant, if any, he should examine the witnesses if any produced by the complainant and any enquiry or investigation under Section 202 of Cr.P.C., thereafter, the learned Magistrate is having power or opinion to proceed the complaint filed by the complainant.

4. The learned counsel for the petitioner has relied upon the judgment in the case of D.N.Bhattacharjee and others v. State of West Bengal and Another reported in (1972) 3 SCC 414, it is stated in para 7 is as follows:

"It has to be remembered that an order of dismissal of a complaint under Section 203, Criminal Procedure Code has to be made on judicially sound grounds. It can only be made where the reasons given disclose that the proceedings cannot terminate successfully in a conviction. It is true that the Magistrate is not debarred, at this stage, from going into the merits of the evidence produced by the complainant. But, the object of such consideration of the merits of the case, at this stage, could only be to determine whether there are sufficient grounds for proceeding further or not. The mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand, such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation. If, however, a bare perusal of a complaint or the evidence led in support of it show that essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, the complaint could be properly dismissed under Section 203, Criminal Procedure Code."

5. In view of the above, it is made clear that when the order has been passed under Section 203 of Cr.P.C., the learned Magistrate should have followed the procedure under Section 203 of Cr.P.C. and thereafter should pass appropriate orders. Admittedly, in the case on hand, the learned Magistrate has not followed the procedure as per Section 203 of Cr.P.C., but simply dismissed the same even after taken the sworn statement.

6. It is my absolute view that the learned Magistrate has not followed the procedure as per Section 203 of Cr.P.C., since once the learned Magistrate has recorded the sworn statement on 21.09.2015, he should take further course of action by directing the complainant to produce the witnesses, oral enquiry or enquiry, thereafter, should pass appropriate orders about the complaint either to taking cognizance or rejection of the complaint. But, it is totally lack on the part of the learned VIII Metropolitan Magistrate. Therefore, this Court warranting

interference in the order passed by the learned VIII Metropolitan Magistrate in unnumbered C.C.No.of 2015 dated 12.04.2017 and the same is liable to be set aside.

7. Considering the facts and circumstances of this case, this Court is inclined to pass the following the orders:

i) The impugned order passed by the learned Judicial Magistrate No.II, Tiruppur made in C.C.No.234 of 2017 dated 24.11.2017, is hereby set aside.

ii) The learned Magistrate is directed to pass appropriate orders after following the procedure under Section 203 of Cr.P.C. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

8. This criminal appeal is allowed with the above direction.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kkd

To

The Judicial Magistrate No.II,
Tiruppur.

+1cc to Mr.A.Raman, Advocate, S.R.No.15643

CRL.R.C.No.274 of 2018

RRK (22/03/2018)

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