

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Cr1.R.C.No.1406 of 2013

N. Karthikeyan ...Petitioner/3rd Respondent/3rd Accused

Vs.

1. Aruna Jain

2. M/s.Agro Chemical Industries,
Rep. by its Partner,
N. Krishnamoorthy,
No.2, Vaniapillaiyar Koil Street,
Erode.

... 1st Respondent/Petitioner/Complainant

3. N. Krishnamoorthy,
Partner,
M/s.Agro Chemical Industries,
No.2, Vaniapillaiyar Koil Street,
Erode. ...Respondents 2,3/Respondents 1 & 2/Accused 1,2

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the Judgment dated 08.06.2012 passed in C.M.P.No.146 of 2010 in C.C.No.323 of 2008 on the file of the learned Judicial Magistrate No.II, Erode.

For Petitioner : Mr.S.Kaithamalai Kumaran

For Respondents : No appearance For R1 to R3

ORDER

The Criminal Revision has been filed against the Judgment dated 08.06.2012 passed in C.M.P.No.146 of 2010 in C.C.No.323 of 2008 on the file of the learned Judicial Magistrate No.II, Erode.

2. Though Notice was served to the respondents, none appeared on behalf of the respondents. The first respondent herein filed a complaint under Section 200 of Cr.P.C. for offence under Section 138 and 142 of Negotiable Instrument Act, read with Section 212 and 420 of IPC before the learned Judicial Magistrate No.2, Erode against the second and third respondents in C.C.No.323 of 2008. During the pendency of the complaint, the first respondent filed a petition in C.M.P.No.146 of 2010, to

implead the third petitioner herein as a respondent in C.C.No.323 of 2008. After filing of counter and hearing both sides, the learned Magistrate allowed the petition and impleaded the revision petitioner as third respondent herein in the above said C.C.

3. Aggrieved against the above said order dated 08.06.2012 passed by the learned Judicial Magistrate No.2, Erode, the petitioner has preferred the present revision before this Court.

4. The learned counsel for the petitioner would submit that he is in no way connected with the second respondent firm. The first respondent filed a complaint against the respondents 2 and 3 proprietary concerned and the 2nd respondent has signed the cheque as mandate holder of the proprietary. There is no statutory notice issued to the revision petitioner herein. Therefore, without complying with the statutory provisions, the petitioner cannot be arrayed as an accused. The learned Magistrate has failed to consider these legal aspects as well as factual positions. Moreover, the learned Magistrate has not passed any speaking order. The order impugned is only a docket order, which warrants interference of this court.

5. Even though notice was served on the respondent 1 and 2, none appeared on behalf of them.

6. Heard the learned Counsel for the petitioner and perused the entire documents available on record.

7. A perusal of documents, it is no doubt that the third respondent issued a cheque in favour of the first respondent. Subsequently, the first respondent presented the cheque for encashment and the same was returned due to insufficient funds. The first respondent issued statutory notice to the second and third respondents and the same was returned with endorsement "'Not Claimed'". But the second and third respondents have failed to repay the cheque amount. During the pendency of the complaint, first respondent filed a petition in C.M.P.No.146 of 2010 to implead the revision petitioner and the learned Magistrate has impleaded him as third accused in the said C.C. The main ground raised in the affidavit filed by the first respondent in C.M.P.No.146/2010 is that the second respondent is a partnership firm and the third respondent and the revision petitioner are partners in the said firm. By mistake, the first respondent issued notice to the respondents 2 and 3 believing that they are only proprietary concerned. Later, he came to know that the second respondent is not a proprietary concerned. It is only a partnership concerned. The third respondent and revision petitioner are partners. Therefore, the learned Magistrate has allowed the petition, in the interest of justice.

8. The learned counsel for the petitioner would submit that he is not partner of the second respondent firm and no statutory notice was issued, without complying the statutory notice, he cannot arrayed as accused and the complaint was preferred after two years. Eventhough the first respondent has stated that initially he was proprietary concerned, has not produced any materials, in support of his case.

9. At this stage, it cannot be decided as to whether the second respondent is a partnership or proprietary concerned. The petitioner is at liberty to take all the defence and produce materials on his side during trial. No prejudice would be caused to him. He could very well demonstrate that he is in no way connected with the second respondent firm. Therefore, under these circumstances, though the order passed by the learned Judicial Magistrate is not a speaking order, since the complaint is of the year 2008 and now we are in 2018, in order to avoid technicalities and also in the interest of justice, this Court finds that there is no merit in the revision to set aside the order passed by the learned Magistrate.

10. In the result, this criminal revision is dismissed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate II, Erode.

2. -do- Through Chief Judicial Magistrate, Erode.

3. The Public Prosecutor, High Court of Madras.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.No.64422

Crl.R.C.No.1406 of 2013

GMV (25/10/2018)