



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Revision No.41 of 2013

Thiru K.Madhu,
Proprietor of
M/s.Sri Durgai Amman Traders,
Saibaba Colony,
Coimbatore - 11.
Petitioner/Complainant

..

Vs

Thiru K. Raman

.. Respondent/Accused

Prayer:- Criminal Revision filed under Section 397 Cr.P.C., against the order dated 05.04.2011 made in C.F.R.No.5213 of 2011 on the file of the learned Judicial Magistrate No.II, Coimbatore.

For Petitioner	: Mr.L.Mouli
For Respondent	: No Appearance

O R D E R

The present criminal revision has been filed against the order dated 05.04.2011 passed in C.F.R.No.5213 of 2011 on the file of the learned Judicial Magistrate No.II, Coimbatore.

2.The facts leading to prefer this revision are as follows :-

The petitioner/complainant is running a proprietorship firm in the name and style of M/s. Durgai Amman Traders at Saibaba Colony, Coimbatore - 11. The respondent/accused purchased Mega 2202 vitrified, Ceramic wall tile febia, JCP Grout white, JCP Grout Majenta, JCP Grout Ivory from the petitioner/complainant on credit basis through invoices. As on 20.09.2010, as per the account maintained by the petitioner, the respondent is liable to pay a sum of Rs.51,595/-. In order to discharge his debt, the respondent issued a cheque dated 29.09.2010 bearing No.034081 for Rs.50,000/- drawn on Union Bank of India, Gandhipuram Coimbatore 12. When the said cheque was presented for collection at Bank of India, Saibaba Colony, Coimbatore, the same was dishonoured for "insufficient funds in the account"



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vide return memo. Hence, the petitioner issued a statutory notice on 08.01.2011 to the respondent calling upon him to repay the due amount and the same was returned to the complainant on 20.01.2011 for the reason "intimated not claimed". Hence, the petitioner filed a complaint against the respondent under Section 138 of the Negotiable Instruments Act before the learned Judicial Magistrate No.II, Coimbatore.

3.When the matter was taken up for hearing before the trial Court on 21.03.2011, the petitioner/complainant was present and the matter was adjourned to 25.03.2011. Again, when the matter was taken up for hearing periodically on 23.03.2011, 31.03.2011 and 01.04.2011 the matter was adjourned to 31.03.2011, 01.04.2011 and 05.04.2011 respectively.

4.Again, when the matter was taken up for hearing by the learned Judicial Magistrate on 05.04.2011, there was no representation for the petitioner. Hence, the learned Judge dismissed the said complaint stating that as there was no representation for the petitioner for the past five hearings, the sworn statement of the petitioner could not be recorded. As against the order dated 05.04.2011, the present civil revision petition has been filed by the petitioner.

5.When the matter was taken up for hearing on 16.08.2018, there was no representation for the respondent. The learned counsel for the petitioner submitted that private notice has been served on the respondent. To that effect, he has also filed proof of service. But, none appeared on behalf of the respondent either in person or through counsel to defend his case. Hence, this Court directed the Registry to post the matter on 20.08.2018 by printing the name of the respondent in the cause list.

6.Accordingly, the matter was posted today i.e. on 21.08.2018 by printing the name of the respondent. Today, when the matter is taken up for hearing, the learned counsel for the petitioner submitted that to give one more opportunity to the petitioner to proceed with the case against the respondent, the order dated 05.04.2011 passed in C.F.R.No.5213 of 2011 on the file of the learned Judicial Magistrate No.II, Coimbatore may be set aside and the matter may be remitted back to the trial Court for recording the sworn statement of the petitioner.

7.Heard the learned counsel for the petitioner and perused the records carefully.

8.Though the name of the respondent is printed in the cause list, today also, there is no representation for the petitioner either in person or through counsel.



9. Considering the submission made by the learned counsel for the petitioner, this Court is inclined to pass the following order:

"(i) The order dated 05.04.2011 passed in C.F.R.No.5213 of 2011 on the file of the learned Judicial Magistrate No.II, Coimbatore is set aside.

(ii) The learned Judicial Magistrate is directed to take C.F.R.No.5213 of 2011 on file and to receive the original cheque.

(iii) After receiving the cheque, learned Judicial Magistrate is directed to record the sworn statement and thereafter proceed with the matter in accordance with law."

In the result, the revision petition is allowed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

cla

To

1. The Judicial Magistrate No.II,
Coimbatore.

2. Do Through The Chief Judicial Magistrate
Coimbatore.

+1 CC to Mr.L. Mouli, Advocate sr 57484.

Cr1.R.C.No.41 of 2013

VD(CO)
SP(25/09/2018)