



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2018

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Cr1.R.C(MD)No.346 of 2018

and

Cr1.M.P(MD) .No.4772 of 2018

Johnson : Petitioner

Vs.

Varghese : Respondent

PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to set aside the order passed in CMP.No.4030 of 2016 in STC.No.738 of 2016 on the file of the Judicial Magistrate No I, Padmanabhapuram dated 07.06.2018.

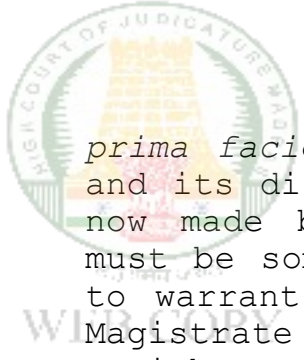
For Petitioner : Mr.Veerakadhiravan
Senior counsel for Mr.T.Nelson

For Respondent : Mr.J.John Jayakumar

ORDER

This petition has been filed to set aside the order passed in CMP.No.4030 of 2016 in STC.No.738 of 2016 on the file of the Judicial Magistrate I, Padmanabhapuram dated 07.06.2018.

2.The grievance of the revision petitioner is that while prosecuting the respondent herein in a private complaint, arising out of Negotiable Instrument Act, during the midst of the trial, he came to know that the cheque issued by the accused is not related to the account maintained by him, but an account maintained by one Vanajakumari. The said fabrication act of fraud came to his knowledge only in the course of the trial. Therefore, the case which is tried as summary trial case has to be converted into warrant procedure case. Accordingly, he has filed an application under Section 259 Cr.P.C, but, the trial Court after considering the plea, has dismissed the petition on the ground that for conversion of summary trial case into warrant case there must be *prima facie* materials. So far as the averment made in the private complaint which is subject matter of STC.No.738 of 2016,



prima facie material is only with respect to issuance of cheque and its dishonoring for want of fund. For the other allegations now made by the defacto complainant/revision petitioner, there must be some material facts before the Court, for converting STC to warrant case. Further, it must be the same offence and the Magistrate to try the offence is of the opinion that the punishment of imprisonment for six months may not be sufficient. So far as facts of the case is concerned, the present allegation now made is in respect of different offence and therefore, the existing STC case cannot be converted into warrant trial case under Section 259 of Cr.P.C.

3. Heard the learned counsel appearing for the revision petitioner and the respondent.

4. Section 259 of the Cr.P.C reads as under:-

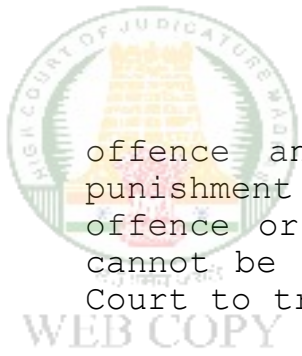
"When in the course of the trial of a summons-case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interests of justice, the offence should be tried in accordance with the procedure for the trial of warrant-cases, such Magistrate may proceed to re-hear the case in the manner provided by this Code for the trial of warrant-cases and may recall any witness who may have been examined."

5. The provision clearly indicates that in the course of the trial of a summons-case, if it appears to a Magistrate that while considering summons case, in the interest of justice, the offence should be tried in accordance with procedure that of the trial of a warrant case. In such circumstances, he may convert the summons case procedure to warrant case. For the said purpose, he may call any witness who already been examined. Whereas if, some new offence is alleged to have been now brought to the knowledge of the complainant in a trial initiated on his private complaint, conversion of summary trial procedure into warrant trial, is not the remedy. By converting the summons case initiated under Section 138 of Negotiable Instrument Act as a warrant case will not serve the purpose and therefore, the order of the trial Court is perfectly right and it needs no interference.

6. If at all the petitioner herein is aggrieved by the conduct of the respondent herein for issuing cheque of somebody else and has cheated him by misrepresentation and fabrication, it is open to him to proceed against him in accordance with law independently but not in this private complaint filed for offence under Section 138 of Negotiable Instrument Act.

7. The reading of the Section is very clear that conversion of summons case into warrant case is permissible only for the same

<https://hcmca.org.in>



offence and by the same Court, if the Magistrate feels the punishment may not be adequate. Therefore, for a different offence or a new offence which has come to light, the procedure cannot be altered to warrant case without basic material for the Court to try.

8. Accordingly, the Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

1. The Judicial Magistrate No. I,
Padmanabhapuram.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC To MR. T. NELSON ASSO, Advocate SR. NO. 81447

ORDER MADE IN
Crl.R.C (MD) No. 346 of 2018

31.08.2018

TR/RP/SAR-IV (28.09.2018) 3P 4C