IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.145 of 2012

P.Singaram ... Petitioner

Vs.

N.Selvam ... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to call for the records and set aside the order dated 05.01.2012 passed in C.M.P.No.9604 of 2011 in C.C.SR.No.9271 of 2011 on the file of the learned Judicial Magistrate, Tambaram.

For Petitioner : M/S.Sampathkumar Associates

For Respondent : No appearance

O R D E R

Heard the learned counsel for the petitioner. There is no representation for the respondent, despite notice.

2.The revision petition is filed against the dismissal of the complaint filed by the revision petitioner under Section 138 of the Negotiable Instruments Act.

3. The learned Magistrate, on perusal of the complaint and documents had observed that the ingredient to attract Section 138 of Negotiable Instruments Act is not made out in the complaint and therefore, for want of fundamental ingredients under Section 138 of Negotiable Instruments Act, the complaint was dismissed. The learned Magistrate, while passing the impugned order had gone into the averment made in the complaint and the legal notice and had arrived at conclusion that the ingredient for 138 is not made out. The trial Court has relied upon the judgment of the Hon'ble Supreme Court rendered in Jugesh Sehgal Vs. Shamsher Singh Gogi reported in 2009 S.A.R Criminal P.741 S.C., wherein, the Hon'ble Supreme Court, after trial, had culled out the ingredients of 138, and had held, in that particular case, one of the ingredients that the cheque should have been issued for the discharge in whole or in part not made out.

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4. Whereas in this case, the complainant has stated that in respect of leather supplied by the complainant, the accused had issued three cheques and the said cheques on presentation were returned with an endorsement 'funds insufficient'. Reading of the statutory notice issued by the complainant dated 19.10.2011, there is a specific averments made in the notice that the three cheques were issued towards discharge of the dues in respect of leather supplied to the accused.

5. While so, the trial Court, taking note of the reply notice issued by the accused, through his counsel, had pre-concluded the fact without trial as if the complainant has not made out the case under Section 138 and no material available to show that the cheque was issued to discharge wholly or partly existence debt. The impugned order on the face of the record is perverse, improper and illegal and liable to be set aside.

6. In the result, the Criminal Revision Case is allowed. The trial Court is directed to take the complaint on file and cause notice to the complainant and the accused to try the complaint afresh in accordance with law and dispose on merits within a period of four months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

rpl

To

1. The Judicial Magistrate, Tambaram.

2. The Section Officer, Criminal Section
   High Court, Madras

+2cc to Mr.Sampathkumar & Associates, Advocate SR.No.30145

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AD(CO)
GMY(08/05/2019)

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