IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.04.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.686 of 2012

S.Shoba,
W/o.M.Suresh Kumar,
Pro.Anhant Grasam Gwahor,
Exclusive Showroom,
No.5-A, Officer's Line,
Vellore. ... Petitioner/Accused

/versus/

E.Balaji,
S/o.Eswara Chettiyar,
No.48/14, Baskal Naidu Street,
Vanniyar Street,
Vellore-4. ... Respondent/Complainant

Prayer:- Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records in connection with the Crl.M.P.No.609 of 2012 in C.C.No.71 of 2011 pending on the file of the Learned Judicial Magistrate, Fast Track Court, Vellore and set aside the order dated 08.05.2012.

For Petitioner : Mr.E.Kannadasan

For Respondent : No appearance

O R D E R

This Revision Petition is directed against the order passed by the Judicial Magistrate, Fast Track Court, Vellore allowing the application filed by the complainant under Section 216 Cr.P.C.

2. The brief case of the case is that the respondent herein filed a private complaint under Section 138 of Negotiable

Instrument Act alleging that the cheque bearing No.944669 of Karur Vysya Bank, Vellore, issued by the revision petitioner in favour of the respondent for Rs.5,10,000/- to discharge the debt of hand loan was dishonoured, on presentation for the reasons "insufficiency of fund". After causing statutory notice, a complaint was filed alleging that the cheque was issued without sufficient fund. Hence, the petitioner is liable for offence under Section 138 of Negotiable Instrument Act.

3. The case of the revision petitioner/accused is that she is not maintaining any account in the Karur Vysya Bank and the cheque was not issued by her, from her account maintained in the said bank. The same was informed to the complainant through her reply notice dated 13.04.2006. Despite that, the complainant has filed a case against her and he was examined as PW.1. The Bank Manager of Karur Vysya Bank was examined as PW.2. In the course of cross examination, the documents produced by the bank had disclosed the accused was not maintaining any account in the Karur Vysya Bank and when the subject cheque was presented for collection, it was returned with an endorsement "Refer the Drawee" and not for insufficiency of fund. After this, the complainant has filed an application under Section 216 of Cr.P.C, seeking for alteration of charge by including Section 420 of I.P.C.

4. The trial Court, after considering the submissions made by the complainant and the counter filed by the respondent/accused has held that from the evidence of PW.2 (Bank Manager), the Court concluded that the accused has not maintaining any account in the said bank and thereby caused wrongful loss to the complainant. So, in view of the evidence adduced by PW.2, there is prima facie case made out for offence under Section 420 of I.P.C. Hence, offence under Section 420 of I.P.C., also to be included against the accused. The said order is impugned in the present revision petition.

5. It is contended that even when the statutory notice was issued on 21.03.2006, the accused has given a reply dated 13.04.2006 stating that she doesn't have any account in Karur Vysya Bank and the subject cheque is not pertaining to the account maintained by her. While so, suppressing the said facts disclosed in the reply, the accused has filed a private complaint under Section 138 of Negotiable Instrument Act. After examining PW.2 (Manager of Karur Vysya Bank) and establishing the fact that the accused does not have any account in Karur Vysya Bank, the application to amend the charge was filed and the same has been erroneously entertained by the trial Court. When a prosecution under Section 138 of Negotiable Instrument Act initiated through a private complaint under the Special Act, alleging dishonour of cheque maintained from the account, the

offence of under Section 420 of I.P.C cannot be included, alleging with fraudulent intention to cheat cheque was issued not from the accused maintained. The procedure contemplated for the trial of offence under Section 138 of Negotiable Instrument Act and for the offence under Section 420 of I.P.C are different. It is not the case of the complainant that at the inception the cheque was issued with a fraudulent intention of cheating. While so, in a pending private complaint, further charges under Section 420 of I.P.C cannot be included. Hence, alleging that the trial Court has miserably failed to apply its mind by allowing the application which virtually had converts the summary trial proceedings into a warrant proceedings, which is against law.

6. Heard the Learned Counsel for the Revision Petitioner. There is no representation for the respondent, despite notice.

7. The perusal of the record clearly indicates that the case of the respondent/complainant was initially about dishonouring of the cheque for want of fund in the account maintained by the accused. Despite, reply notice informing him that the cheque is not from the account maintained by the accused, the complainant has thought fit to proceed with the private complaint under Section 138 of Negotiable Instrument Act. The said complaint was presented before the Judicial Magistrate on 09.05.2005, by that time itself, the complainant was aware of the fact that the accused has disowned the cheque and the account in Karur Vysya Bank. The complainant thought fit to file a petition under Section 216 of Cr.P.C only after examination of PW.2 who has categorically stated that the accused is not maintaining any account in his bank. This application to add charge has been filed on 08.02.2012, after 7 years.

8. The Trial Court, without taking note of the fact that the initial complaint of issuing cheque from the account maintained by the accused, without sufficient fund and the allegation that a cheque was issued by the accused, which does not belong to the accused account are generically different offence. The accused cannot be a trial under Section 138 of Negotiable Instrument Act and under Section 420 of I.P.C in the given factual scenario, since, issuing cheque from the account maintained without sufficient fund and issuing a cheque of somebodies account or forging signatures are mutually contradictory to each other. Without considering this vital difference, the Court below has erroneously allowed the application. Since the impugned order is perverse and illegal it is liable to be set-aside.

9. Accordingly, the Criminal Revision Petition is

Allowed. The impugned order passed by the Judicial Magistrate, Fast Track Court, Vellore, dated 08.05.2012 is set-aside. Registry is directed to send the records to the Court below for expeditious disposal of the criminal complaint in accordance with law.

Sd/-

Assistant Registrar (CJ Conj)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Judicial Magistrate,
   Fast Track Court, Vellore.

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

+1cc to Mr. E.Kannadasan, Advocate, S.R.No. 39782

Criminal Revision Case No.686 of 2012

SKV(CO)
GN(03/06/2019)