

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 28.01.2019	Delivered on 01.02.2019
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP No.27673 of 2018
and
Crl.M.P.No.15963 of 2018

Jafferulla

..Petitioner

..Vs..

K.Rajendiran

..Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the Order passed in STC No.721 of 2017 dated 26.10.2018, on the file of the Judicial Magistrate I, Tirupattur insofar as the order altering the summary trial case under Section 138 of NI Act in to Calendar case C.C.No.116 of 2018, for the offences under Sections 406,420,467,468 and 471 of IPC.

For Petitioner : Mr.C.K.M.Appaji

For Respondent : Mr.R.Sankarappan

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below, altering the Summary Trial Case filed under Section 138 of the Negotiable Instruments Act, into a Calendar Case for offence under Sections 406, 420, 467, 468 and 471 of IPC.

2. The petitioner along with his mother were facing a private Complaint filed by the respondent under Section 138 of the Negotiable Instruments Act. The respondent was examined as PW-1 and 7 documents were marked and the case was thereafter adjourned. The learned Magistrate on 26.10.2018, proceeded to dismiss the complaint insofar as the accused A-1 viz; the mother of the petitioner is concerned under Section 203 of Cr.P.C and altered the charges and converted the case into a Calendar Case against this petitioner for an offence under Sections 406, 420, 467, 468 and 471 of IPC. While doing so, the Court below took into consideration the deposition of PW-1 made while he was

examined in chief to the effect that this petitioner had borrowed the amount from the complainant and had issued the cheque, and later the complainant came to know that this petitioner had misused the cheque of his mother by forging her signature in the cheque, and therefore the Court below came to a conclusion that the mother of the petitioner did not commit any offence.

3. The learned counsel for the petitioner submitted that PW-1 was not even cross examined by the petitioner and the Court below has proceeded to alter the charges merely based on the statement made by PW-1 while he was examined in chief. The learned counsel further submitted that the Court below ought to have altered the charges only after giving an opportunity to the petitioner as contemplated under Section 216 (2) of Cr.P.C and this procedure has not been followed by the Court below.

4. The learned counsel for the respondent submitted that the Court below had sufficient materials before it in order to alter the charges and convert the case into a Calender Case and the petitioner can always defend his case before the Court below and no prejudice is caused to the petitioner by the procedure adopted by the Court below.

5. The only issue that requires consideration of this Court is as to whether the Court below ought to have brought to the notice of the petitioner the materials available against him and only after hearing his explanation, should have proceeded to alter the charges.

6. It will be relevant to extract Section 216 (2) Cr.P.C. :

"S.216(2) Every such alteration or addition shall be read and explained to the accused."

7. The trial Court has been given very wide powers to add or alter the charges at any stage, till the pronouncement of the judgment. However 216(2) of Cr.P.C makes it very clear that before making such an alteration in the charge, it is obligatory on the part of the trial Judge to bring to the notice of the accused the materials available against him and explain the same to the accused and thereafter proceed to alter the charges. If this procedure is not followed, the very alteration of charges is vitiated for non compliance of the mandatory procedure contemplated under Section 216(2) of Cr.P.C.

8. It will be relevant to refer the judgment of the Hon'ble Supreme Court in Sabbi Mallesu & Ors .Vs. State of Andhra Pradesh, reported in AIR 2006 SC 2747. The relevant paragraph of the judgment is extracted hereunder:

"19.The power of the Court to alter the charges is neither in doubt nor in dispute but in terms of Sub-section 2 of Section 246, Cr.P.C., it was obligatory on the part of the learned Sessions Judge to bring it to the notice of the accused and explain the same to the accused. The same having not been done, it cannot be said that the requirements of Section 246 of the Criminal Procedure Code stood complied with. It must also be borne in mind that all the accused were acquitted for commission of an offence under Section 147 of the Indian Penal Code".

9. It is clear from the above that the Court below has failed to comply with the mandatory procedure prescribed under Section 216(2) of Cr.P.C. Therefore, this Court has to necessarily interfere with the order passed by the Court below dated 26.10.2018.

10.The order passed by the Court below is set aside insofar as the alteration of the charges is concerned. The Court below is directed to bring to the notice of the petitioner the materials against him and explain the same to the petitioner and get the response from the petitioner and only thereafter proceed to exercise its jurisdiction under Section 216 of Cr.P.C. The Court can thereafter proceed further in accordance with law.

This Criminal Original Petition is accordingly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

KP

To

The Judicial Magistrate - I, Tirupattur.

+1cc to Mr.C.K.M.Appaji, Advocate SR.No.8913

Cr1.OP No.27673 of 2018

AK(CO)

GMV(22/02/2019)