

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CrI.O.P.No.16373 of 2019
and
CrI.M.P.No.8209 of 2019

M.Ajay Kumar

.. Petitioner

Versus

M.Nataraj

.. Respondent

Prayer: Petition filed under Section 482 Cr.P.C., to set aside the order passed by the learned Judicial Magistrate of Sulur in C.M.P.No.3477 of 2018 in C.C.No.1008 of 2017 dated 06.06.2019.

For Petitioner : Mr.A.Tamilarasan

For Respondents : No appearance.

O R D E R

This Criminal Original Petition has been filed seeking the relief to set aside the order dated 06.06.2019 passed by the learned Judicial Magistrate, Sulur, in CMP No.3477 of 2018 in C.C.No.1008 of 2017.

2. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

3. The petitioner herein, is the complainant in C.C.No.1008 of 2017, pending on the file of the learned Judicial Magistrate, Sulur. He has preferred the above referred case against the petitioner under Section 138 of the Negotiable Instruments Act. After the completion of trial, when the case is reserved for pronouncing judgment, the petitioner herein filed a petition under Section 216(1) of Cr.P.C., before the learned Judicial Magistrate, Sulur and prayed to alter the charge under Sections 406 and 420 of IPC along with Section 138 of Negotiable Instruments Act.

4. The learned Judicial Magistrate after affording an opportunity to the respondent, by order dated 06.06.2019 dismissed the same after observing that the evidence recorded on the side of the complainant did not attract the ingredients of provisions under Section 406 and 420 of IPC as claimed by the petitioner. Aggrieved over the same, the petitioner is before this Court.

5. Before entering into the merits and demerits of this petition, it is necessary to see Section 216(1) of Cr.P.C, which reads as follows:

"Any Court may alter or add to any charge at any time before judgment is pronounced."

6. From the above, it is clear that Section 216 Cr.P.C., provides the Court an exclusive and wide-ranging power to change or alter any charge. The use of the words "at any time before judgment is pronounced" in Sub-Section (1) empowers the Court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the Court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence.

7. In the case of Dr.Nallapareddy Sridhar Reddy Vs. The State of Andhra Pradesh & Ors., reported in 2020 SCC OnLine SC 60, our Hon'ble Apex Court has held that though the Court is having the power to add or alter the charge before pronouncing the judgment, the test to be adopted by the Court while deciding upon the addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence.

8. Further, in the case of Onkar Nath Mishra Vs. The State, reported in (2008) 2 SCC 561, our Hon'ble Apex Court has held thus:

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that

stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

(Emphasis supplied)

9. Therefore, by applying the ratio laid down by our Hon'ble Apex Court in the above referred cases, without pronouncing on the probative value of such evidence, there exists sufficient material on record that shows a connection or link with the ingredients of the offences under Sections 406 and 420 of the IPC, the charges for the above offences cannot be added.

10. In the impugned order passed by the learned Judicial Magistrate, Sulur, he categorically held that the evidence and other materials have not elicited the ingredients of offences under Sections 406 and 420 of the IPC. This Court also agrees with the said findings arrived at by the trial Court. The materials supplied on the side of the petitioner do not disclose the fact that the respondent is having the intention to deceive and defraud the petitioner. Further in respect to the offence under Section 406 of IPC, nothing was averred about the legal entrustment made by the petitioner.

11. Therefore, in all, the impugned order passed by the learned Judicial Magistrate, Sulur, is having the substantial merit and therefore, the Criminal Original Petition filed by the petitioner is dismissed. Consequently, the connected Criminal Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Judicial Magistrate,
Sulur.

Crl.O.P.No.16373 of 2019
and Crl.M.P.No.8209 of 2019

SSI (CO)
SP(07/12/2020)