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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.09.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No.18076 of 2017

M/s.R.S.Infotainment Pvt. Ltd.,
Rep. by its Manager,
G.Mahesh

.. Petitioner

Vs.

1. M/s.The Safire Offset Printers,
a Partnership firm,
Represented by it's Partner,
A.Vijayasekaran.

2. V.Sivasankar

3. A.Gnanasekaran

4. A.Dhanasekaran

5. B.Ganeshkumar

6. F.Merlin

.. Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in the order, dated 16.08.2017 made in Crl.M.P.No.2000 of 2017 by the learned XVII Metropolitan Magistrate, Saidapet at Chennai and set aside the same and consequently, direct the learned Magistrate to take the complaint on file.

For Petitioner : Mr.K.P.S.Palanivelrajan

For Respondents : Mr.K.Kannan

ORDER

The petitioner was originally an accused in C.C.No.113 of 2017, which was pending before the learned Judicial Magistrate,



Saidapet. That Calendar Case was with respect to a cheque issued by the petitioner herein, which had been returned by the bank, when presented for payment, leading to filing of complaint under Section 138 of Negotiable Instruments Act, 1881.

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2. Thereafter, it is the contention of the present petitioner herein that the amounts mentioned in the cheque had been repaid, but, there were two other cheques which had been given as security and those cheques were demanded to be returned. They were not returned. Complaining that this had led to offences, punishable under Section 420 of I.P.C., a private complaint had been given under Section 200 of Cr.P.C., by the petitioner herein before the learned XVII Metropolitan Magistrate, Saidapet. The learned Magistrate, by an order, dated 16.08.2017 had given an advice that the petitioner should first take a step to quash the proceedings in the cases under Section 138 of Negotiable Instruments Act or take necessary defence before the learned Judicial Magistrate, Sivakasi in the said Calendar Cases, and after saying so, dismissed the complaint.

3. The grievance of learned Counsel for the petitioner, Mr.K.P.S.Palanivelrajan is that, once a complaint has been given under Section 200 Cr.P.C., then the learned Magistrate, before whom the complaint is presented, should proceed in manner known to law. The manner known to law means the process indicated in the Code of Criminal Procedure itself, wherein, under Section 202 of Cr.P.C., the learned Magistrate should make an enquiry with respect to averments made in the complaint. That would necessitate taking a sworn statement of the complainant and of any witnesses and thereafter, coming to a prima facie opinion whether process has to be issued to the accused or not.

4. The learned Magistrate is at liberty at that particular stage to take any decision. But, that particular decision taken is subject to satisfaction of the learned Magistrate and reasons will have to be recorded on the basis of the statements of the defacto complainant/witnesses produced by the defacto complainant.

5. On the basis of such statements, there must be application of mind to determine whether any offence had been made out necessitating issuance of process to the accused in the complaint. Learned Magistrate cannot, on receipt of a complaint under Section 200 of Cr.P.C., return it back and give advice considering the procedure which has to be adopted by the complainant namely either to file a quash petition with respect to the pending calendar case or take up necessary defence in the pending calendar case.



6. The grievance of the present petitioner is that consequent to repay of the money, which, as a fact, has to be established independently, the respondents herein had not returned back the further cheques, which had been given as security. These are the facts, which can be gathered only by examining witnesses through recording the sworn statements of either the complainant/witnesses produced by the complainant herein. Without resorting to such a step, the learned Magistrate cannot return back the complaint. This has led to the filing of the present Criminal Original Petition.

7. I would, therefore, remand the matter back to the learned XVII Metropolitan Magistrate, Saidapet, Chennai, direct that steps in accordance with law be taken. Learned Magistrate may also keep in mind that a quash petition filed against C.C.No.113 of 2017 is also pending in this Court.

8. The present Criminal Original Petition is therefore allowed, but, however the matter is remanded back to the learned XVII Metropolitan Magistrate, Saidapet, Chennai, to follow the procedure in accordance with law.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

grs/kbs

To

The XVII Metropolitan Magistrate,
Saidapet, Chennai.

+1cc to M/s.K.P.S.Palanivel Rajan, Advocate, S.R.No.45741

Cr1.O.P.No.18076 of 2017

PMK(CO)
SU(08/10/2021)