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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.R.C.NO.359 OF 2015

K.Vasudevan

... Petitioner

Versus

1. M/s.Genix Automation Pvt. Ltd.,
Rep. by its Managing Director
Byeong In Yoo

2. Byeong In Yoo

3. Uday Vasatrao Nikam

4. Jong Jun Kim

5. Hiren Harshadrai Desai

6. G.Vivek

... Respondents

Prayer:

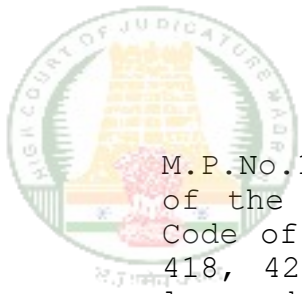
Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the judgment, dated 07.03.2015 passed by the learned XIV Metropolitan Magistrate, Egmore, Chennai in M.P.No.191 of 2015 and consequentially, direct the learned XIV Metropolitan Magistrate, Egmore, Chennai to take the private complaint on file and proceed in accordance with law.

For Petitioner : Mr.R.Palaniandavan

For Respondent : No Appearance

ORDER

This Criminal Revision is filed by the petitioner/complainant, aggrieved by the order of the learned XIV Metropolitan Magistrate, Egmore, dated 07.03.2015 in



M.P.No.191 of 2015, whereby, after recording the sworn statement of the complainant, in a complaint filed under section 200 of Code of Criminal Procedure alleging offences under Sections 417, 418, 420 read with 120B read with 34 of Indian Penal Code, the learned Magistrate found that there was no prima facie case against the A1 to A6, upon examining the allegations in the complaint and the sworn statement on the ground that the transaction is purely civil in nature and is a business transaction and no prime facie ingredients for the offences under Sections 417, 418 and 420 of Indian Penal Code is made out as against the accused persons. This apart, the learned Magistrate also had found that the place of delivery of goods is at Kancheepuram and therefore, it does not come within the territorial jurisdiction of that Court and thus, dismissed the complaint under Section 203 of Code of Criminal Procedure. Aggrieved by the same, the present Revision is laid before this court.

2. In the present Revision, notice was ordered to the first respondent company and the other individuals, being the Managing Director and Directors and persons in charge of the company, respondents 2 to 6. Repeated Court notices and the private notice, sent by the petitioner, have returned with an endorsement that as far as the address of the first accused company in Sriperumbudur taluk is concerned, the same seems to be closed permanently. The other address being 111/112, Vinayak Arcade, Opposite to Bajaj Auto Ltd., Akrudi, Pune - 411035 is said to be the registered office of the company. Notices sent to the said registered office of the company have also returned unserved on the ground that the accused are not found in the said address. The complainant can only be expected to take notice to the registered address of the company and to the place of business of the company, and both being returned, the learned counsel would submit that the same has to be taken as been wilful evasion of service and therefore, taking into account the said endorsements in the postal covers, read with Section 403 of Code of Criminal Procedure and coupled with the fact that the subject matter relates to pre-cognizance stage, service is treated as complete and this court proceeded to hear the matter on merits as the Criminal Revision is pending from the year 2015, for want of service.

3. Heard a Mr.R.Palaniandavan, the learned Counsel for the petitioner.

4. The learned Counsel took this Court through the averments in the complaint and it is submitted that it can be seen that after placing a purchase order and accepting goods for a total price of Rs.21,31,812/-, in repayment thereof, the accused had issued 3 cheques amounting to Rs.7,00,000/- lakhs and all the 3



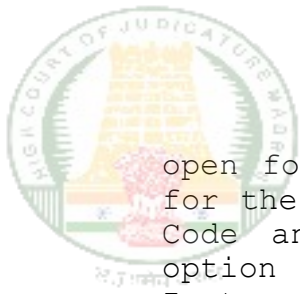
cheques returned dishonoured for the reasons "funds insufficient". Even when the statutory notice under the Negotiable Instruments Act was sought to be served, the same had returned with the endorsement as "always door locked". Under these circumstances, considering the manner in which the first accused company and the accused Nos.2 to 6, being the Managing Director, Directors and the persons incharge of the affairs of the company, have operated like fly-by-night operators, having closed shop and disappeared, the complainant, instead of filing complaint under Section 138 of the Negotiable Instruments Act, chose to file the present complaint, complaining the offences under Section 417, 418, 420 read with 120B and 34 of Indian Penal Code.

5. The learned Counsel would further submit that the legal position has been clearly laid down by the Hon'ble Supreme Court of India in Dashrath Rupsingh Rathod Vs. State of Maharashtra¹, whereby, the Hon'ble Supreme Court has clearly held that in spite of Section 138 of the Negotiable Instruments Act, the option of prosecuting under Section 420 of Indian Penal code is still available if the payee finds it advantageous or convenient to proceed under that provision. The learned Counsel further add that in this case, no complaint under Section 138 of the Negotiable Instruments Act was also filed and the complainant has taken a conscious decision to proceed only under Section 417, 418, 420 of the Indian Penal Code and therefore, once the cheque is given with the promise to make good the payment and thereafter not making provisions in their account for the cheque amount and closing the unit and vanishing, would clearly establish the ingredients under Section 417, 418 and 420 of Indian Penal Code and therefore, the learned Magistrate erred in holding that the entire transaction is civil in nature.

6. I have considered the submissions made by the learned Counsel for the petitioner. I have perused the averments made in the complaint as well as the sworn statement recorded. The complainant as well as the sworn statement clearly brings forth the factum of supply of goods, non-payment thereafter, issuance of cheque, dishonour of the cheques for the reasons "funds insufficient", and closure of the factory at Sriperumbudur without informing the creditor. Therefore, I am in agreement with the submissions made by the learned Counsel for the petitioner that the complaint prima facie discloses the offences under Section 417, 418 and 420 read with 120B and 34 of Indian Penal Code.

7. As rightly pointed out by the learned Counsel for the petitioner, even if the cheque has bounced, if the nature of the transactions point out towards an intention to cheat, it will be

1 (2014) 9 SCC 129



open for the complainant to proceed under the Indian Penal Code for the offences under Sections 417, 418 and 420 of Indian Penal Code and in this case, the complainant has chosen the said option and no complaint, under Section 138 of the Negotiable Instruments Act, has been filed. Therefore, the order of the learned XIV Metropolitan Magistrate, in this regard, is unsustainable.

8. As far as the territorial jurisdiction is concerned, it is the submission of the learned Counsel that firstly, the transaction also emanated from the offices of the complainant at Egmore within the jurisdiction of the learned Metropolitan Magistrate. This apart, the consequence of the cheating and the loss was to the complainant whose address is at Egmore and therefore, by virtue of Section 179 of Code of Criminal Procedure, the learned Magistrate had territorial jurisdiction to entertain the same. Therefore, since a part of the transaction is also from the office of the complainant and the effect of the cheating is also felt in the office of the complainant company, there is territorial jurisdiction for the learned Magistrate to entertain the complaint. This apart, once the learned Magistrate decides to entertain the complaint on merits and proceeded to give finding on merits, the alternative finding on the territorial jurisdiction is also unsustainable.

9. For all the above reasons, the order impugned in this Criminal Revision, passed by the learned XIV Metropolitan Magistrate, Egmore, Chennai, dated 07.03.2015 in M.P.No.195 of 2015 is set aside. The learned Magistrate is directed to take the case on file, issue summons to the accused and proceed with the case in accordance with the law. Considering the efflux of time, the learned Magistrate is requested to deal with this complaint as expeditiously as possible.

10. The Criminal Revision Case is allowed as aforesaid.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

grs



To

The XIV Metropolitan Magistrate,
Egmore, Chennai.

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+2ccs to Mr.R.Palaniandavan, Advocate, S.R.No.5274

Cr1.R.C.No.359 of 2015

KSM(CO)
PM/18/02/2022