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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.03.2022
Pronounced on : 11.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No.158 of 2021
and Crl.M.P.No.3348 of 2021

Vasanthi ... Revision Petitioner

Vs.

Rajendran ... Respondent

Criminal Revision Case filed under Section 397 and 401 of of the Code of Criminal Procedure, against the order dated 12.02.2020 made in CMP No.4545 of 2019 in C.C.No.546 of 2012, on the file of the learned Judicial Magistrate No.I, Villupuram.

For Revision Petitioner :Mr.A.Tamilvanan

For Respondent :Mr.K.Ravi Anantha Padmanaban

O R D E R

This Criminal Revision Case has been directed against the order passed by the learned Judicial Magistrate No.I, Villupuram, allowing the petition filed by the complainant under Section 216 of Cr.P.C.

2. The case in brief is that the respondent herein filed a private complaint under Section 138 of Negotiable Instruments Act, alleging that the cheque bearing No.102324 of Union Bank of India, Salaimedu Branch, Villupuram, issued by the revision petitioner in favour of the respondent for Rs.3,00,000/- to discharge the debt of hand loan was dishonoured, on presentation for the reasons of '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 Instruments Act.

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3. The case of the revision petitioner/accused is that she is not maintaining any account in the Union Bank of India 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 18.09.2012. Despite that, the complainant has filed a case against her and he was examined as PW.1. The Bank Manager of Union Bank of India, Salaimedu Branch, Villupuram, was examined as PW.2. In the course of cross examination, the documents produced by the bank had disclosed that the accused was not maintaining any account in the Union Bank of India and when the subject cheque was presented for collection, it was returned with an endorsement 'Fund Insufficient'. After this, the complainant has filed a petition under Section 216 of Cr.P.C, seeking for alteration of charge by including Sections 120(B) and 420 of I.P.C.

4. The trial Court, after considering the submissions made by complainant and the respondent/accused has held that from the evidence of PW.2 (Bank Manager), it is clear that the accused has not maintained any account in the said bank, whereas she had issued the cheque, which belongs to her husband's account viz., Balasubbramaniyam and thereby caused wrongful loss to the complainant. So, in view of the evidence adduced by PW.2, there is a 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 03.09.2012, the accused has given a reply dated 18.09.2012 stating that the cheque pertains to this case, was not issued from her account. It was further stated that 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 Instruments Act. After examining PW.2 (Manager of Union Bank of India) and also after, establishing the fact that the accused does not have any account in Union Bank of India, Salaimedu Branch, a petition to amend the charge was filed in CMP No.4545 of 2019 in C.C.No.546 of 2012 and the same has been erroneously entertained by the trial Court. When a prosecution under Section 138 of Negotiable Instruments 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 account maintained. The procedure contemplated for the trial of offence

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under Section 138 of Negotiable Instruments 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, it is alleged that the trial Court has miserably failed to apply its mind by allowing the petition which virtually converts the summary trial proceedings into a warrant proceedings and it is against law.

6. It is the submission of the learned counsel appearing for the respondent that after knowing the fact that the cheque pertains to the case is not from her account, she signed as a 'drawer' and issued the same. The said act committed by the petitioner, would disclose the fact that the petitioner with a dishonest intention to deceive the respondent, issued the cheque and therefore, under Section 216 of Cr.P.C., this Court is having ample power to alter the section of law at any point of time.

7. Heard the Learned Counsel appearing on either side and perused the materials available on record.

8. The perusal of the record clearly indicates that the case of the respondent/complainant was initially for dishonouring of the cheque which was issued from 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 Instruments Act. The said complaint was presented before the Judicial Magistrate on 28.09.2012, by that time itself, the complainant was aware of the fact that the accused has disowned the cheque and the account in Union Bank of India. The complainant thought fit to file a petition under Section 216 of Cr.P.C only after examination of PW.2 (Bank Manager) who has categorically stated that the accused is not maintaining any account in his bank. Later, this petition to add charge has been filed on 25.07.2019 i.e., after 7 years. If the petitioner is having intention to deceive the respondent, it would not be necessary for her to mention the details of cheque, in the reply notice itself, as the cheque is not from her account.

9. The Trial Court, has not taken 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

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offence. The accused cannot be a tried for the offence 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 petition. Since the impugned order is perverse and illegal, it is liable to be setaside.

10. Accordingly, the Criminal Revision Case is Allowed. The impugned order passed by the Judicial Magistrate No.I, Villupuram, dated 12.02.2020 is setaside. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

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To

The Judicial Magistrate No.I,
Villupuram.

+1cc to Mr.A.Tamilvanan, Advocate SR.No.16445
+1cc to Mr.K.Ravi Anantha Padmanaban, Advocate SR.17358
(01/07/2022)

Crl.R.C.No.158 of 2021

KV(CO)
CB(21/03/2022)
CB(01/07/2022)