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Crl.RC.No.452 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2023

CORAM:

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.452 of 2020

P.Sekar Petitioner/Appellant/Complainant

Vs

G.Manohar Respondent/Respondent/Accused

Prayer: Criminal Revision Case filed under Sections 397 r/w 401 of Cr.P.C., to set aside the order dated 21.08.2019 passed by the XVIII Additional Sessions Judge, Chennai, in Crl.A.No.68 of 2019, confirming the order of the Fast Track Court, Magistrate Level – I, Egmore at Allikulam passed in C.C.No.945 of 2015 dated 07.01.2019 and convict the respondent/accused in accordance with law.

For Petitioner : Mr.S.T.Varadarajulu

For Respondent : No appearance

ORDER

This Criminal Revision Case is filed challenging the concurrent findings of the Courts below dismissing the private complaint filed under Section 138 of Negotiable Instruments Act.



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2. The vital point involved in this case is that whether the private complaint, without the signature of the complainant and his counsel, can be treated as a complaint in the eye of law. Though the complaint was dismissed not only on the ground that the written complaint was not signed by the complainant and his counsel, but also on the other grounds that the complaint is bereft of details like where the advance amount of Rs.3 lakhs was given and where and when the cheques marked as Ex.P2 to P4 were issued to discharge the existing liability.

3. For the sake of disposal of the revision petition, it is suffice to look into the law whether a private complaint, without signature, can be entertained.

4. As far as the Code of Criminal Procedure is concerned, Section 154 states that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and read over to the informant and every such information, whether given in writing or reduced to writing, shall be signed by the person giving it. As far as the private complaint presented before the Court, Section 200 of Cr.PC says, Magistrate is



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competent to take cognizance of an offence on complaint and the witnesses present, if any, provided the complaint is made in writing.

5. Section 138 of Negotiable Instruments Act deals with the complaint regarding dishonour of cheque for insufficiency etc., of the fund in the account. Whereas Section 142 deals with the cognizance of the offence which states that notwithstanding anything containing in the Code of Criminal Procedure, no Court shall take cognizance of any offence punishable under Section 138, except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course to the cheque.

6. The learned counsel appearing for the revision petitioner submitted that the complaint in writing but not signed by the complainant is a curable defect. The Court has taken cognizance of the offence not solely based on the complaint, but after taking the sworn statement of the complainant. Therefore, the complaint cannot be dismissed on the ground that the complainant has not signed the complaint.



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7. This Court, after giving anxious consideration to the provisions of the law, referred above, find that, the Code of Criminal Procedure states that the complaint must be reduced in writing and signed by the complainant. However, Section 142 starts with non obstante clause “notwithstanding anything containing in the Code”. Therefore, it is clear that under Section 142 of Negotiable Instrument Act, Court can take cognizance of the complaint and no condition in the Section 142 that the said complaint must be signed by the complainant.

8. To verify the statement made by the learned counsel for the revision petitioner that the cognizance of the complaint was taken by the Magistrate only after recording the sworn statement of the complainant, this Court called for the records from the Lower Court and found that this complaint though not signed by the complainant which was verified on 03.12.2013, the learned Magistrate on 27.12.2013 has recorded the sworn statement of the complainant and after perusing the records being prima facie satisfied that the case is made out under Section 138 of Negotiable Instruments Act had taken the complaint on file and transferred it to FTC-I, Egmore and had directed the complainant to appear before the FTC- I, Egmore on 24.01.2014. Thereafter, the accused, on receipt of the summon, has appeared



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and received the copy of the complaint on 09.04.2014. He had made necessary acknowledgment in the complaint. After taking cognizance of the offence, the trial conducted, the complainant had mounted the witness box and subjected himself for cross examination.

9. Therefore, this Court agreed with the submissions made by the learned counsel for the revision petitioner that the failure to sign the complaint is a curable defect and in the instant case the defect has been cured by giving a sworn statement duly signed before taking cognizance and submitting himself for cross examination in the course of trial.

10. As far as the other point regarding the source of money lend and the legally enforceable debt is concerned, this Court wish to record the fact that the accused before issuance of the cheque had given an acknowledgment deed dated 27.07.2013 indicating that he has borrowed a sum of Rs.5 lakhs on different dates from the complainant. This deed of acknowledgment is marked as Ex.P1 by the complainant. This Court finds that due consideration of Ex.P1 has not been given by the Trial Court as well as the lower Appellate Court. For these reasons, there is perversity and illegality in the order of the Courts below which requires interference. Hence, ***this Criminal Revision Case is***



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allowed.
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The matter is remanded back to the Trial Court for fresh consideration and for passing orders on merits.

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Index: Yes/No

Speaking / Non Speaking Order

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To

1. The XVIII Additional Sessions Judge, Chennai
2. The Metropolitan Magistrate, Fast Track Court, Magistrate Level – I, Egmore at Allikulam



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Dr.G.JAYACHANDRAN, J

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