

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-11-2006

CORAM:

THE HONOURABLE MR.JUSTICE R.REGUPATHI

Crl.R.C.No.764 of 2006 and  
M.P.No.1 and 2 of 2006

N.Anbarasu

.. Petitioner/Accused

Versus

M.Ganesan

.. Respondent/Complainant

Prayer: Revision filed under Section 397 & 401 of Crl.P.C seeking to call for the records in Crl.M.P.No.2503 of 2006 in C.C.No.467 of 2003 on the file of the Judicial Magistrate III, Erode and set aside the same.

For Petitioner : Mr.A.M.Rahamath Ali  
For Respondent : Mr.K.Selvaraj

O R D E R

A private complaint in C.C.No.467 of 2003 was taken on file by the learned Judicial Magistrate III, Erode for an offence punishable under Section 138 of the Negotiable Instruments Act

2. The petitioner, A-2 along with his father were accused in the case. The case of the complainant is that a cheque for Rs.4 lakhs has been issued signed by both the accused and on deposit it was dishonoured, resulting in the filing of the private complaint. Pending proceedings, the first accused died. The complainant has been examined as P.W.1. The bank manager has been examined as P.W.2. P.W.2 during the course of his evidence, disclosed that the accounts stand in the name of the father of the petitioner (A-1) and the petitioner is not a joint holder of the account. In such circumstances, as new facts have been revealed through the evidence of P.W.2, the complainant/respondent filed a petition under Section 216 Cr.P.C to include Section 420 IPC in the case to proceed against the petitioner. After hearing the petitioner, the learned Magistrate passed an order impugned, which is the subject matter in the present revision.

3. Learned counsel appearing for the petitioner submits that Section 138 of the Negotiable Instruments Act is a summons proceeding. The trial of the offence under Section 420 IPC may have to be taken up by adopting warrant procedure. P.W.1 and P.W.2 have been examined and the defence of

the petitioner is that it is only the first accused liable for the debt. In view of the addition of the offence under Section 420 IPC, the petitioner will be losing his opportunity enshrined under the Criminal Procedure Code. In such circumstances, it is argued that the order passed by the learned Magistrate is erroneous and liable to be set aside.

4. Per contra the learned counsel for the respondent/complainant submits that the complainant was under the impression that the account has been maintained by the petitioner along with his father. Even in the written memo, it was not revealed by the bank manager. It came to light only during the course of evidence by P.W.2 before the Court. As new facts have come into picture and on the basis of new facts since a prima facie case is made out for an offence under Section 420 IPC, a petition under Section 216 Cr.P.C has been filed and it is in accordance with law.

5. I have perused the materials available on record and heard the submissions made.

6. Under Section 216 Cr.P.C, the Court may alter or add any charge at any time before the judgment is pronounced. After alteration or addition of the charge, the learned Magistrate may proceed with the trial, as if the altered or added charge had been the original charge. The trial Court may have to take care of the accused, so that prejudice should not be caused to him and thereby all opportunities must be given to him.

7. In such circumstances, during the course of trial of a summons case, when new materials came into existence through the evidence, the complainant is entitled to invoke the provisions of Section 216 Cr.P.C. The learned Magistrate has specifically observed that the complainant is "directed to adduce further evidence regarding Section 420 Cr.P.C". Summons case procedure has been adopted, since the offence alleged is under Section 138 of the Negotiable Instruments Act. After filing of the additional materials if any from the side of the complainant, an opportunity will be given to the accused even before framing of the charges. Thereafter the procedure which may have to be followed in a trial of warrant case will be adopted. The apprehension entertained by the petitioner is unsustainable. The petitioner may agitate his defence at the appropriate time. In such circumstances prejudice may not be caused. Therefore, I do not find any merit in the petition. Hence, the petition is dismissed. Consequently, connected MPs are closed.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

csH

To

1. The Judicial Magistrate III,  
Erode.

2. -Do-Thro' The Chief Judicial Magistrate,  
Erode.

1 cc To Mr.K.Selvaraj, Advocate, SR.59007.

1 cc To Mr.AM.Rahamath Ali, Advocate, SR.59022.

Crl.R.C.No.764 of 2006

GM(CO)  
RVL 20.12.2006



WEB COPY