

**IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD**

DATED THIS THE 30TH DAY OF AUGUST, 2011

BEFORE

THE HON'BLE MR.JUSTICE B.V.PINTO

CRL.P.NO.10730/2011

Between:

The Manager,
Dena Bank, Nagashetty Halli Branch,
Bangalore-560094.

... Petitioner

(By Sri.Surendra V.Kamat, Advocate)

And:

1. Sri.Y.Sathyanarayana,
S/o.Y.Nageshawara Rao,
Age 42 years, Managing Partner
Of Sri.Sai Srinivas Rice Industries,
Adhoni Road, Siruguppa-583121,
Bellary District.
2. Sri.Thimappa S/o.Timmegowda,
M/s.Super Food Bazar, 2nd Road,
1st Building, Sanjay Nagar,
Opposite Dena Bank, Nagashetty
Halli, Bangalore-94.

... Respondents

(By Sri.Ganapati M.Bhat, Adv. for R2.
Sri.Gode Nagaraj Adv. for R1.)

This criminal petition is filed under Section 482 of Cr.P.C. seeking to call for records in P.C.No.41/2010 pending on the file of the Civil Judge & JMFC Court, Siruguppa and to quash the entire Criminal Proceedings in P.C.No.41/2010 against the petitioner that is accused No.2 at trial Court and

to stay further proceedings pending disposal of the petition a separate stay application filed and pass any other order.

This petition coming on for final disposal this day, the court made the following:

ORDER

This petition is filed seeking to quash the proceedings in P.C.No.41/2010 pending on the file of the learned Civil Judge & JMFC Court, Siruguppa for the offence under Section 138 of N.I. Act.

2. It is the case of the of petitioner that he is the Manager of the Dena Bank, Nagashetty Halli Branch, Bangalore, in which the cheque was issued by the 2nd respondent and was presented for payment and when the cheque infavour of 1st respondent was dishonored, the first respondent has filed a private complaint under Section 200 of Cr.P.C. for the offence under Section 138 of N.I. Act, not only against the drawer of the cheque, but also against the Bank Manager.

3. Heard Sri.Surendra V.Kamat, learned counsel appearing for the petitioner and also Sri.Ganapati M.Bhat, learned counsel appearing for respondent No.2. Respondent



No.1 is absent though respondent No.1 was secured before the Court on 29.08.2011 by issuing non-bailable warrant on 29.08.2011. When the respondent No.1 was produced before this Court, this Court had questioned as to whether the Bank Manager is due to him any amount and the respondent No.1 submitted that there is no amount due from the Bank Manager. It was also informed that exemplary cost will be imposed against him for wrongly arraigning Bank Manager of Dena Bank, Nagashetty Halli Branch, Bangalore as accused and securing non-bailable warrant against him and thereafter, arresting the said Bank Manager and producing him before the Court.

4. From the perusal of the complaint, it is seen that the learned Magistrate on receipt of the complaint on 24.12.2010, registered the case as private complaint and thereafter, issued the notice on I.A.No.1 to both the accused without applying his mind as to why the said notice is issued. The order sheet maintained by the learned magistrate further indicates that on 29.12.2010 the Court has taken cognizance and thereafter, directed to register a case in P.C.No.41/2010.



The learned Magistrate has again sent the matter for investigation and the matter was posted on 19.01.2011. On 19.01.2011 the learned Magistrate has ordered for reissue of summons to the accused through RPAD and posted the matter on 05.02.2011. On 05.02.2011 the learned Magistrate has ordered as await process and call on 18.02.2011. On 18.02.2011 the learned Magistrate has ordered as follows:

“Accused No.2 absent. Issue NBW to A2. A1 is absent reissue notice to A1” call on by 04.03.2011.”

5. From the recitals of the order sheet, it is seen that the learned Magistrate has not at all applied his mind as to why Bank Manager-petitioner herein is required to appear before him, nor sworn statement of the complainant has been recorded. Hence, issuance of process against the petitioner is clear abuse of process of law. Therefore, the proceedings against the petitioners are liable to be quashed. Since, the learned Magistrate has not recorded the sworn statement of the complainant, the proceedings against the respondent No.2 are also liable to be set aside from the stage of its filing, since, the said procedure of issuance of warrant/summons against



the accused, without recording sworn statement is illegal.

Therefore, following order is made.

ORDER

- a) Proceedings in P.C.No.41/2010 pending against the petitioner i.e., Manager-Sri.Y.Sathyanarayana of Dena Bank, Nagashetty Halli Branch, Bangalore is hereby quashed.
- b) The order taking cognizance against accused No.1-Sri.Thimappa S/o.Timmegowda is also set aside and the matter is remanded to the learned Magistrate to proceed against the 1st accused in accordance with law.
- c) The 1st respondent/complainant is directed to pay a penalty of Rs.10,000/- as costs to the petitioner for wrongly arraigning the petitioner as accused being the Bank Manager and making him to appear before the Court and further for the inconvenience caused to him in appearing before the Court in Siruguppa by coming all the way from Bangalore and for offering a surety in this case.
- d) The respondent No.1 is directed to deposit the said amount within a period of four



weeks. Thereafter, the learned Magistrate is directed to send the amount by way of Court cheque to Sri.Y.Sathyanarayana of Dena Bank, Nagashetty Halli Branch Bangalore.

In the event of failure of the 1st respondent in depositing the fine amount, the learned Magistrate is directed to issue destraint warrant and order sale of movable property of the 1st respondent and recover the amount. Accordingly, petition is allowed with cost to respondent/complainant.

**Sd/-
JUDGE**

Vnp*