

(2010) 07 MAD CK 0365

Madras High Court

Case No: Criminal R.C. (MD) No. 105 of 2010 and MP. (MD) No. 1 of 2010

K. Velmurugan

APPELLANT

Vs

N. Ganesan

RESPONDENT

Date of Decision: July 1, 2010

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2011) 4 RCR(Civil) 926

Hon'ble Judges: S. Palanivelu, J

Bench: Single Bench

Advocate: P. Muthuvijayapandian, for the Appellant; A.K. Manickam, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Palanivelu, J.

The revision petitioner is the complainant in S.T.C. No. 1432 of 2008, which is a private complaint u/s 138 of Negotiable Instruments Act, pending before the Judicial Magistrate, Uthamapalayam. Pending the trial, he filed a Crl. M.P. No. 12542 of 2009 praying the Court to permit him to amend the cheque Number in the complaint from 450151 to 005055. The respondent has filed a cross-objection stating that it is not lawful for the complainant to amend his complaint and in case of amending the cheque number, nature of the case will turn hostile and therefore, he prayed that the petition may be dismissed.

2. After hearing both the parties, the learned Judicial Magistrate dismissed the petition by observing that the typed sworn statement recorded by his predecessor, the number of the cheque stands corrected, that in the cheque, Advocate notice and proof affidavit in the chief-examination have been amended with reference to the cheque number, for which the sanction of the Court was not accorded, that the correction was attested by the Judicial Magistrate and hence, the petition could not

be allowed.

3. The learned counsel for the petitioner would submit that when the mistakes entered into the records by inadvertence, the Court must be magnanimous to condone it, permitting the amendment and for this purpose, the learned counsel for the petitioner rely upon the decision reported in [Valsamma Vs. Satheesh Kumar](#), wherein it is observed as follows :- (Para 4 of Cri.L.J.)

No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors, committed by the parties or to find out and declare who among the parties performed better.

4. He also garnered, support from another decision of the same Court in [Kavuri Suwarna Bala Sundaram Vs. Karnati Poorna Chandra Rao and Another](#), in which it is held thus :- (Para 6 of Cri.L.J.)

Therefore, mentioning of the number of the dishonoured cheque is wholly unnecessary and irrelevant in a proceeding u/s 138 of the Act. In view thereof the fact that there is variation in the number of the cheque mentioned in the notice of dishonour and in the body of the complaint and the cheque that is filed into court is of no sequence when in the notice of demand the amount covered by the dishonoured cheque is correctly mentioned. So, merely on the ground that wrong number of the dishonoured cheque is mentioned in the notice u/s 138 of the Act and the complaint, the complaint cannot be quashed.

5. As far as the [Valsamma Vs. Satheesh Kumar](#), is concerned, the Court is of the opinion that if there were any inadvertence on the part of the party for a mistake crept into the records, then the Court must be magnanimous in permitting such mistake to be corrected. Insofar as the another case of [Kavuri Suwarna Bala Sundaram Vs. Karnati Poorna Chandra Rao and Another](#), the view taken by the Court was if the mistake is of no consequence then there is no wrong on the part of the Court to allow the party to correct it. In the case on hand, the mistake could not be stated to be inadvertent, nor of less or no importance.

6. It is the categorical finding of the Court below that without the prior permission of the Court, the complainant has embarked upon laying his hands into the Court records after they were presented into the Court and after they became the property of the Court, it has to be discouraged.

7. The learned counsel for the respondent would submit that when the complaint is presented into the Court, it must be perfect in all other aspects and after filing the same, the complainant has no right to correct it and the Court cannot entertain it. In support of this contention, he placed much reliance upon the decision of a Division

Bench of this Court reported in [A. Vinayagam and 3 others Vs. Dr. Subash Chandran and another](#), wherein, it is held as follows :

We only observe that it is for the complainant to produce a defect less complainant, if because of such defects, such as non-mentioning of the age and names of father, etc., the identity of the accused person becomes suspicious or is not established properly then, the complainant must suffer for his defective complaint, under no circumstances, could, the Magistrate return the complaint, particularly after the court-seal has been put on that complaint and the court-fees stamps have been cancelled then, as rightly found by Janarthanam. J., the complaint becomes the court property.

8. The above said Division Bench judgment has been referred and followed by subsequent decision of this Court in (2007) 2 MLJ (Crl) 912, A.L. Lakshmanan v. K.N. Palanisamy and (2010) 1 MLJ (Crl) 733, K.K. Saravanakumar v. Saravanan.

9. In view of this Court, when the complaint is presented into the Court, it is the duty of the complainant to ensure that all the particulars of the complaint are correct and perfect and on observing the same only he has to present the same into the Court. As per the above said Division Bench decision, after the complaint becomes property of the Court, the complainant has no business to lay his hands on the same and he has to face the consequences of the defects or wrongs contained therein.

10. In view of the above such circumstances and following the guidelines contained in the Division Bench Judgment of this Court, it is held that the present amendment application could not be entertained which has to suffer dismissal. As per foregoing discussions, this Court is not inclined to interfere with the order passed by the Court below, which deserves to be confirmed and accordingly it is confirmed and therefore, the revision has to fail.

11. In fine, the revision petition is dismissed. Consequently, connected miscellaneous petition is closed.