

(2009) 07 KAR CK 0107
In the Karnataka High Court
Case No : Criminal Petition No. 5516 of 2007

Smt. B.R. Premakumari

APPELLANT

Vs

Supraja Credit Co-op. Society Ltd.

RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 204
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2010) 1 BC 120 : (2009) ILR (Kar) 3477 : (2009) 6 KarLJ 127 :
(2010) 5 RCR(Criminal) 753

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : H.P. Leeladhar, for the Appellant; Shivakumar Kallur, for the Respondent

Final Decision : Allowed

Judgement

Subhash B. Adi, J.—Respondent is the complainant He filed a private complaint u/s 200 of Cr.P.C. for the offence punishable u/s 138 of the Negotiable Instruments Act. In support of the complaint, his sworn statement was recorded and documents connected with the offence were also produced.

2. The learned Magistrate by his order dated 16.9.2006 directed the registration of the complaint and also issue summons in terms of the following order:

On perused of the sworn statement and the available records, the complainant has made out a prima facie case against the accused and there are sufficient material grounds to proceed against the accused for the offence punishable u/s 138 of N.I. Act. In the result, I proceed to pass the following order.

ORDER

Register the case against the accused as C.C. in register No. 3 u/s 138 of N.I. Act and issue summons to accused, returnable by 16.1.2007.

3. Learned Magistrate while exercising power u/s 200 of Cr.P.C. is required to consider the averments in the complaint, sworn statement and the material and has to

satisfy himself as to whether there is a prima facie case made out against the accused to proceed.

4. In this case, no doubt the sworn statement is recorded, but the learned Magistrate in a casual way without even considering the material, without even considering the averments in the complaint, has observed that, there are sufficient material grounds to proceed against the accused. The purpose of recording sworn statement, statement of witnesses and production of documents, is to arrive at prima facie conclusion that there is a case to proceed against the accused and the order of issuing summons must show the satisfaction and grounds. However, the learned Magistrate not referring to the sworn statement, not referring to the material, has ordered for issue of summons. Even to take cognizance, the facts must constitute an offence.

5. No doubt taking cognizance does not require an order to be passed, but when the learned Magistrate wants to proceed against the accused by issuing summons, it necessarily warrants consideration of the case of the complainant and to give reasons for his satisfaction, though not elaborate reasons, but prima facie reasons for his conclusion. It is seen that in a casual way the orders are passed for issuing summons, some times stereo type. This is not the object of Section 204 of the Cr.P.C. Section 204 of Cr.P.C. mentions that;

If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be a summons case, he shall issue his summons for the attendance of the accused....

6. Section 204 of Cr.P.C. requires that Magistrate, must form an opinion and must also find that, there is sufficient ground for proceeding against the accused.

7. This Court has held that, recording of sworn statement means, the statement of the complainant to be recorded by the Magistrate not by way of an affidavit. The affidavit does not partake the character of sworn statement. The object of recording sworn statement is, for the purpose of satisfaction of the Magistrate who records the sworn statement to find out whether there is prima facie case made out. Accepting the affidavit in the place of sworn statement is deprecated by this Court.

8. The learned Magistrate neither has applied his mind, nor has considered the material, nor has formed an opinion, nor has recorded the sworn statement. It is in this factum, the matter requires reconsideration by the learned Magistrate.

9. Accordingly, this petition is allowed. The impugned order of registering the complaint issuing summons is quashed. Matter is remitted to the learned Magistrate to proceed from the stage of recording of sworn statement.