

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1341 OF 2009
[Arising out of SLP(Crl.) No. 8693/2008]

K. SATYANARAYAN

... APPELLANT(S)

:VERSUS:

MADHUR AND ANR.

... RESPONDENT(S)

ORDER

S.B. SINHA, J.

Leave granted.

The appellant is before us aggrieved by and dissatisfied with the judgment and order dated 25.7.2008 passed by the High Court of Judicature at Bombay, whereby and whereunder a writ petition filed by him marked as Criminal Writ Petition No. 514/2006 questioning the correctness or otherwise of the judgment and order dated 4.2.2006 passed by the JMFC, Sakoli, in Summary Criminal Case No.3990/2002 arraying him as an additional accused, has been dismissed.

The original accused Shridhar son of Bhapuji Donapanji, is said to have issued a cheque for Rs. 10 lakh to respondent No.1. The said cheque was

presented by the respondent before the Bank of India, Branch Lakhani, for realisation, but the same was returned to him with the endorsement “Fund Insufficient”.

A notice was served upon Shridhar for making payment of Rs. 10 lakh within 15 days of the receipt thereof and on his failure to pay the amount, a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') was filed.

During the hearing of the said complaint petition, allegedly, the Bank Manager stated that the account was opened in the name of the appellant herein. Relying on or on the basis of the said statement, the complainant (respondent No.1 herein) filed an application purported to have been filed under Section 319 of the Cr.P.C. before the learned Magistrate for summoning the appellant as an additional accused in the said complaint application. The said application was allowed by the learned Magistrate by his order dated 4.2.2002. A writ petition preferred thereagainst has been dismissed by the impugned judgment.

Indisputably, the Courts in ordinary circumstances may exercise their jurisdiction in terms of Section 319 Cr.P.C. to summon any person as an additional accused. However, the proviso appended to Section 138 of the Act mandates that before a complaint petition thereunder becomes maintainable, the conditions precedents specified therein must be satisfied. It is not in dispute that no notice was served upon the appellant by the complainant-respondent No.1 in

terms of proviso (b) appended to Section 138 of the Act and in that view of the matter, the complaint petition being not maintainable against him, the learned Magistrate must be held to have committed a jurisdictional error in passing the impugned order dated 4.2.2006.

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly and the appeal is allowed.

.....J
(S.B. SINHA)

.....J
(DEEPAK VERMA)

NEW DELHI,
JULY 20, 2009.

