

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.1257 of 2014
and M.P.Nos.1 and 2 of 2014

R.Arumugam

... Petitioner

vs.

M/s.Sri Sujies Benefit Fund Limited
rep.by its Managing Director,
S.Boopathy,
S.B.Towers,
No.262-A, Pollachi Road,
Sundarapuram,
Coimbatore-641 024.

... Respondent

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to set aside the judgment dated 06.11.2014 on the file of the IV Additional Sessions Judge, Coimbatore, in C.A.No.54 of 2012, confirming the judgment dated 27.01.2012 passed by the Judicial Magistrate, Fast Track Court No.II, Coimbatore in C.C.No.444 of 2011.

For Petitioner : Mr.S.Deenadayalan

For Respondent : Mr.K.R.Sankaran,
for Mr.Karthik Raja

JUDGMENT

Judicial Magistrate, Fast Track Court No.II, Coimbatore, has taken cognizance of the complaint under Section 138 of the Negotiable Instruments Act, 1881, and after trial in CC.No.444 of 2011, convicted the petitioner and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for three months.

2. During the pendency of appeal, C.A.No.54 of 2012, petitioner has taken out CMP No.36 of 2014, seeking for a direction

to mark a document dated 31.03.2010, namely, a certified xerox copy of immovable property wherein attachment warrant has been issued by the Special Court under TANPID Act, Coimbatore, in OA.No.14 of 2009 in CC.No.53 of 2008.

3. Record of proceedings of CMP No.36 of 2014 in CA.No.54 of 2012, discloses that a counter affidavit has been filed on 01.07.2014 and arguments on appeal were heard on 27.10.2014. As per the endorsement, arguments made in the appeal, was also adopted, as the arguments made in CMP.36 of 2014. Appeal was posted for orders on 06.11.2014. On the said date, conviction and sentence imposed by the learned Judicial Magistrate, Fast Track Court No.II, Coimbatore, in CC.No.444 of 2011, dated 27.01.2012, has been confirmed.

4.By inviting the attention of this Court to Section 391 of the Code of Criminal Procedure, 1973, learned counsel for the petitioner submitted that the learned IV Additional Sessions Judge, Coimbatore, appellate Court, ought to have passed a separate order in the said CMP.No.36 of 2014, recording reasons for its dismissal. According to the learned counsel, the appellate Court, has failed to exercise its jurisdiction under Section 391 of the Code of Criminal Procedure, 1973. Attention of this Court was also invited to the Judgment in CA.No.54 of 2012 dated 06.11.2014, on the file of the learned IV Additional Sessions Judge, Coimbatore and submissions were made in this revision that the appellate authority has failed to consider, even the averments made in CMP No.36 of 2014 and recorded any reasons, with reference to either, acceptance or rejection of the evidence, sought to be made at the appellate stage. He has also drawn the attention of this Court to the observation made by this Court, while considering the suspension of sentence. For the reasons stated supra, learned counsel for the petitioner has prayed to set aside the impugned order and seeks for remand.

5. Per contra, opposing the relief sought for, Mr.K.R.Sankaran, learned counsel for the complainant submitted that no specific ground with reference to Section 391 of the Code of Criminal Procedure, 1973, has been made in the grounds of revision. He further submitted that the intention of the petitioner is only to protract the proceedings. Learned counsel for the respondent further submitted that if permission of this Court is granted to address on merits, as to whether the certified xerox copy of immovable property attachment warrant issued by the Special Court under TANPID Act, Coimbatore, in OA.No.14 of 2009 in CC.No.53 of 2008, is required for deciding the appeal he would make further submissions. According to him, there is no error committed by the Appellate Court, warranting interference. He prayed to sustain the impugned Judgments.

6. Heard the learned counsel for the parties and perused the material available on record.

7. Before advertng to the rival contentions, this Court deems it fit to extract, Section 391 of the Code of Criminal Procedure, 1973, and it reads thus:

"391. Appellate Court may take further evidence or direct it to be taken.

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

8. Indisputably, CMP No.36 of 2014 has been filed under Section 391 of CrPC, for a direction to mark a document dated 31.03.2010, certified xerox copy of immovable property attachment warrant issued by the Special Court under TANPID Act, Coimbatore, in OA.No.14 of 2009 in CC.No.53 of 2008. Averments made in the said CMP No.36 of 2014 in support of the prayer sought for, are as follows:

"4. Now the respondent abused and misused the blank cheques and filed criminal complaints against the petitioner and against the said P.Selvaraj and his brother P.Krishnakumar claiming his right under the pronote jointly executed by the three persons. Unfortunately, the petitioner's case is separately tried and now in appeal stage whereas the two cases are pending still before trial Court in C.C.No.183 of 2001 and C.C.No.233 of 2001.

5. It is pertinent to point here that in the cross examination the respondent as PW1 would say that no action was taken on the mortgage loan. This is false. The respondent and his other directors of the firm initiated proceedings against the said P.Selvaraj and attached his property and the same is now brought to

sale which is amply and clinchingly evidence by the attachment warrant issued by the Special Court under TANPID Act, Coimbatore, in O.A.No.14 of 2009 in C.C.No.53 of 2008 for a sum of Rs.94,62,092/-.

6. When the respondent has taken civil proceedings for the recovery of the loan dues of the said P.Selvaraj on the basis of the equitable mortgage deed and attached his property and bringing the same for sale the act on the part of the respondent to initial proceedings against this innocent petitioner under the Negotiable Instruments Act tantamount to double jeopardy which cannot at all be executed on all standards."

As stated supra, a counter affidavit has been filed by the respondent/complainant. Arguments made in the appeal is stated to have been adopted as arguments in CMP also.

9. As rightly pointed out by the learned counsel for the petitioner, perusal of the entire judgment, made in C.A.No.54 of 2012, on the file of the learned IV Additional Sessions Judge, Coimbatore, does not disclose that the appellate Court has considered any averments, in relation to the proceedings, CMP No.36 of 2014 filed, in which a prayer to mark the abovesaid documents, is sought for.

10. As per Section 391 of the Code of Criminal Procedure, 1973, the appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is the High Court, by a Court of Session or a Magistrate. As per Sub-section (2) of Section 391 of the Code of Criminal Procedure, 1973, if the appellate Court, for the reasons to be recorded in writing, decides to allow additional evidence, then the Code of Criminal Procedure, 1973, sets out the procedure for taking additional evidence.

11. Perusal of the order made in MP Nos.1 and 2 of 2014 in CrI.RC.No.1257 of 2014, dated 16.12.2014, also shows that on the earlier occasion, when the revision petition came up for hearing, along with an application for suspending the sentence, prima facie finding that there is an irregularity of the proceedings of the inferior Court, this Court at Para 3 has observed as follows:

"3. In the instant case, this Court has ordered notice towards early remission of the matter to appellate court upon finding that a petition moved by the revision petitioner seeking permission to bring forth additional evidence has been dismissed on the

very day of dismissal of the appeal without any separate order being passed on the miscellaneous petition, Therefore, Registry is directed to carry out necessary corrections in the order dated 05.12.2014 by deleting the portion marked within inverted commas above."

12. Though Mr. K. R. Sankaran, learned counsel for the respondent objected to the matter being remitted, on the ground inter alia that no ground in relation to Section 391 of CrPC has been made in the revision petition, this Court is not inclined to countenance the said submission. Section 397 of the Code of Criminal Procedure Code reads as follows:

"397. Calling for records to exercise powers of revision.—

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

(2) The powers of revision conferred by subsection (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

13. When the irregularity of the proceedings of any inferior Court, is per se apparent on the face of record, and when the appellate Court, has failed to exercise its jurisdiction under Section 391 of the Code of Criminal Procedure, 1973, and when such Court had dismissed the CMP without recording any reason in the Judgment made in C.A.No.54 of 2012, such irregularity in the proceedings, cannot be allowed to remain at large. Courts have consistently held that if there is any irregularity or illegality in the procedure followed, it would cause serious prejudice to the accused and would be an infringement to his defence.

14.In the light of the above discussion, this Court is inclined to set aside the Judgment dated 06.11.2014 passed by the learned IV Additional Sessions Judge, Coimbatore, in C.A.No.54 of 2012, and remit the matter to the said Court, to consider, CMP No.36 of 2014, and pass orders on merits in accordance with the said provision, and thereafter, decide on merits of the appeal.

With the above directions, this Criminal Revision Case is allowed. Time for disposal is two months. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Asst.Registrar (AD I)

/true copy/

Sub Asst. Registrar

mps

To

1.The IV Additional Sessions Judge,
Coimbatore.

2.The Judicial Magistrate,
Fast Track Court No.II,
Coimbatore.

3.The Public Prosecutor,
High Court of Madras,
Chennai.

1 cc to Mr. K.S. Karthik Raja, Advocate, Sr. 4383

1 cc to Mr.V.V. Sairam, Advocate, sr. 4254

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and M.P.Nos.1 and 2 of 2014

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