IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 1-9-2015

Pronounced on : 4-9-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.21786 of 2015 & M.P.No.1 of 2015
Crl.O.P.No.21787 of 2015 & M.P.No.1 of 2015

S. Renuka .. Petitioner in both the Ops (Accused)

Vs.

S.Parvatham .. Respondent in both the Ops (Complainant)

Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure with a prayer to set aside the order dated 8.8.2015 made in C.M.P.No.2965 of 2015 in C.C.No.56 of 2007 and C.M.P.No.2966 of 2015 in C.C.No.185 of 2006 respectively, on the file of the learned Judicial Magistrate No.I, Erode.

For Petitioner : Mr.N.Manoharan

O R D E R

For the sake of convenience, the parties herein will be referred to as 'the Complainant' and 'the accused'.

2. It is the case of the Complainant that the accused had borrowed Rs.5 lakhs on 24.10.2010 and had issued a post dated cheque dated 3.1.2006 for Rs.5 lakhs, which when presented for collection, was dishonoured, pursuant to which a statutory notice dated 2.2.2006 was issued by the Complainant, and on the failure of the accused to pay the amount, the Complainant launched prosecution in C.C.No.56 of 2007 and C.C.No.185 of 2006 respectively, in which the accused was convicted by the trial Court and was sentenced to undergo one year simple imprisonment and to pay a file of Rs.3,000/-, in default to undergo further one month simple improsonment, by judgment dated 24.11.2009.

3. It appears that during trial, the accused had filed proof affidavit in lieu of examination in chief. The accused filed C.A.No.243 of 2009 and 243 of 2009 before the Sessions Court challenging his conviction and sentence. The Sessions Judge set aside the conviction and sentence on the ground that the trial Court ought not to have accepted the proof affidavit of the accused in lieu

of examination in chief in the witness box. Challenging the order passed by the appellate Court, the Complainant approached this Court in Crl.R.C.No.52 of 2011 and 50 of 2011 respectively, which were disposed of by this Court on 9.7.2013 directing the trial Court to take evidence in chief of the accused once again.

4. When the matter went back to the trial Court, the accused filed C.M.P.No.2965 of 2015 in C.C.No.56 of 2007 and C.M.P.No.2966 of 2015 in C.C.No.185 of 2006 under section 254(2) of Cr.P.C. to examine the Branch Manager of the State Bank of India, Erode Branch, as a defence witness. The trial Court dismissed C.M.P.Nos.2965 of 2015 and 2966 of 2015 on 8.8.2015, challenging which the accused is before this Court.

5. The learned Counsel appearing for the accused submitted that the learned Magistrate had dismissed the petitions filed under section 254(2) Cr.P.C. on the ground that the matter was remanded only for the purpose of recording the chief examination of the accused, and therefore the accused cannot be permitted to adduce any further evidence. The learned counsel contended that this is an erroneous reasoning and when once the judgment of the trial Court has been set aside by the appellate Court, the right under Section 254(2) of Cr.P.C. cannot be extinguished. There is sufficient force in the submission of the learned counsel for the accused.

6. In support of his contention Mr.N.Manoharan, learned counsel relied upon the decision in Kalyani Baskar v. M.S.Sampoornam, (2007) 2 SCC 258, wherein the Hon'ble Supreme Court has stated the scope of section 254 Cr.P.C. There is sufficient force in the submission of Mr.N.Manoharan that the learned Magistrate had erroneously proceeded under the premise that the accused cannot be permitted to lead defence evidence under Section 254(2) Cr.P.C. The facts in Kalyani Baskar's case (supra) has been narrated in para 10, which is as follows:

> "10. It is not in dispute that the appellant at the initial stage of her appearance before the Magistrate had filed an application under Section 245 Cr.P.C. in which she had categorically denied her signature on the cheque and its delivery to the respondent besides raising other preliminary objections in opposition to the complaint filed by the respondent under Section 138 of the Act. From the record, it appears that the said application was dismissed by the Magistrate on the ground that the genuineness of the signature can be questioned only at the time of trial. The appellant accepted the correctness of the said order of the Magistrate. During the trial, the respondent was examined as PW-1 on 22.9.1999 and PW-3, the officer of the bank was examined on

22.11.2000. It is thereafter that the appellant had filed the application under Section 243 Cr.P.C. praying to send the cheque in question, for ascertaining the bona fide and genuineness of her signature appended thereon. The trial Magistrate as well as the High Court have observed that Section 243 Cr.P.C. deals with summoning of defence witnesses and cause any document or thing to be produced through him. But in the present case, the accused has filed a petition without naming any person as witness or anything to be summoned which is to be sent for handwriting expert for examination."

In those circumstances the Supreme Court allowed the plea of the accused in that case.

7. In these cases, the petition under Section 254(2) Cr.P.C. has been filed by the accused for examining the Branch Manager of State Bank of India, Erode Branch, wherein the complainant was having her account. According to the accused, the complainant was not able to pay her bank dues and SARFAESI action against her was taken on 24.8.2010 for defaulting to make repayment of the loan obtained by her from the State Bank of India, Erode Branch, and that would show that the complainant is not a person of means to give loan to the accused. In the cases on hand, the complainant had given loan of Rs.5 lakhs to the accused on 24.10.2005, which is five years prior to the SARFAESI action. The case of the complainant is that the accused did not return the loan and the cheque issued by the accused also bounced. May be on account of the failure of persons like the accused to repay the money taken from the complainant, she would have been pushed to the position of a defaulter of loans in the year 2010. Therefore, the fact that the complainant became bankrupt subsequently in the year 2010, can in no way come to the aid of the accused.

8. In Dr.Rajesh Talwar v. CBI, (2013) 4 MLJ (Crl) 362 (SC), Hon'ble Supreme Court held that the criminal Courts are not obliged to accede to the request made by a party to entertain and allow application for additional evidence, and they can refuse such requests, if it appears that they are made in order to vex the proceedings and delay the trial.

9. In these cases, the debt is of the year 2005; the cheque was given in 2006; the accused was convicted in 2007; the conviction and sentence has been set aside on technical grounds; the matter was remanded to the Magistrate for recording examination in chief of the accused; and at that juncture, the accused had filed the present petitions to examine the Bank Manager to prove certain facts, said to have occurred in the year 2010, which will have no bearing to the facts in issue.

10. In the result, these petitions are devoid of merits and they are dismissed. The order of the trial Court is confirmed not on the grounds therein, but for the reasons given above. Connected miscellaneous petitions are also dismissed.

vr

s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

The Judicial Magistrate No.1,
Erode.

+ 2 ccs to Mr.N.Manokaran, Advocate SR 48294

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