

Bail Slip

The Revision Petitioner viz., M/s.L.Ashokchand, S/o. Loon Chand, was directed to release on bail as per order of this court dated 05.02.2008 in M.P.No.1 of 2008 in Crl.R.C.No.164 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No.164 of 2008

L.Ashok Chand

...Petitioner

vs

C.Ramabai
rep.by Mr.Suryakant

...Respondent

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 15.11.2007 passed by the learned Additional District and Sessions Judge cum Fast Track Court No.2, Chennai in Crl.Appeal No.62 of 2006 confirming the order dated 01.03.2006 passed by the learned VIII Metropolitan Magistrate, George Town, Chennai in C.C.No.8629 of 2004.

For Petitioner : No appearance

For Respondent : Notice sent, service awaited

ORDER

Criminal Revision Case filed as against the Judgment dated 15.11.2007 passed by the learned Additional District and Sessions Judge cum Fast Track Court No.2, Chennai in Crl.Appeal No.62 of 2006 confirming the order dated 01.03.2006 passed by the learned VIII Metropolitan Magistrate, George Town, Chennai in C.C.No.8629 of 2004.

2. When the matter came up for admission in the year 2008, notice was ordered to the respondent, however, the same was not served. Again, when the matter was listed on 14.09.2012, this Court directed the petitioner to take private notice to the respondent; for effecting private notice no proof was filed. Thereafter, for the past three years, the matter was not listed. Once again, the matter was listed before this Court on 07.04.2015, 10.04.2015 and 05.06.2015, there was no representation for the petitioner as well as the

respondent. Hence, the matter was directed to be listed today under the caption ''for dismissal''. Even today, there is no representation for the petitioner and that the notice sent is still awaited. Therefore, the Criminal Revision Case is taken up for disposal on merits as per the judgment of the Hon'ble Supreme Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka].

3. The case of the complainant in brief is as follows:

(a) The petitioner/accused borrowed a sum of Rs.1,00,000/- on 03.07.2003 and in order to discharge the legally enforceable debt, the petitioner issued two promissory notes each for a sum of Rs.50,000/- and also issued a cheque bearing No.108500 dated 03.07.2004 drawn on Canara Bank, Sowcarpet, Chennai-79. However, when it was presented for payment, the same was returned on 09.07.2004, with the endorsement "funds insufficient". Hence, the complaint.

(b) The trial Court, after analysing the oral and documentary evidence available on record convicted the petitioner for the alleged offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo six months simple imprisonment and also directed to pay a compensation of Rs.1,00,000/- as per Section 357(3) of the Criminal Procedure Code. As against the conviction and sentence imposed and the compensation ordered, the petitioner filed Crl. Appeal No.62 of 2006 and the first appellate Court by judgment dated 15.11.2007 confirmed the same.

(c) Aggrieved over the same, the present revision is filed.

4. The main contention of the petitioner is that the complainant, viz., Ramabai, who is a salaried employee, did not appear before the Court below to give evidence that such a cheque was issued to her by the petitioner and for that purpose, he also issued subpoena to the respondent/complainant through the trial court to rebut the liability and presumption. Further he would state that inspite of the notice issued, the respondent/complainant did not appear and therefore, the Court below should have taken adverse inference as against the complainant. Further he would state that PW1 is only the power of attorney agent of the complainant and hence, he is an incompetent witness and therefore, also the Courts below should have rejected his witness. According to him, the Power of Attorney has taken the promissory notes, Exs.P2, P3 and P4 and however failed to pay the loan amount and the complainant has misused the same for filing such a complaint. Accordingly, by contending that both the Courts below have failed to take into consideration this vital aspect, prayed for setting aside the judgments passed by the Courts below by allowing this Criminal Revision Case.

5. I have perused the records.

6. On a careful consideration of the entire evidence available on record as well as the judgments passed by the Courts below, it is very clear that the petitioner himself has admitted that Exs.P2, P3

and P4 have been executed by him and there is no dispute about it. In fact, there were two promissory notes, viz., Exs.P2 and P3 and Ex.P4 is the cheque issued by the petitioner. Once the petitioner clearly admits that he has executed the promissory notes as well as the cheque and handed over the same to the complainant, the presumption is only in favour of the complainant and it is for the petitioner/accused to rebut the same. No doubt, the accused has examined himself and also examined one more witness, viz., Sampath Kumar and also produced the Accounts ledger of the respondent/complainant. Therefore, the rebuttal as such has not been clearly established. Above all these things, for the statutory notice issued on 12.07.2004, which the petitioner/accused had received on 16.07.2004, no reply was sent. Failing to give a reply at the earliest point of time, raising this point, is fatal to the case, which has been rightly pointed out by the Courts below. In fact, the trial Court has clearly pointed out that PW1 in his evidence has admitted that the complainant had given a cheque for a sum of Rs.1,00,000/- to the petitioner/accused, who had encashed the same and had also issued, Exs.P2 to P4, viz., the two promissory notes and the cheque for the same. Further, it is pointed out by the trial court that the accused in his cross examination had also admitted the signature and execution of the two promissory notes as well as the cheque issued to the complainant. Therefore, the consideration has been clearly proved. Hence, both the Courts below have rightly come to the conclusion that since the consideration has been proved effectively, the non-examination of the complainant is not necessary.

7. In view of the above specific understanding and agreement between the parties regarding the payment and also in admitting the signature, I do not find any reason to interfere with the reasoned judgments passed by the Courts below.

8. In the result, this Criminal Revision Case fails and the same is dismissed.

Sd/-
Deputy Registrar(J)

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Sub Assistant Registrar

vj2

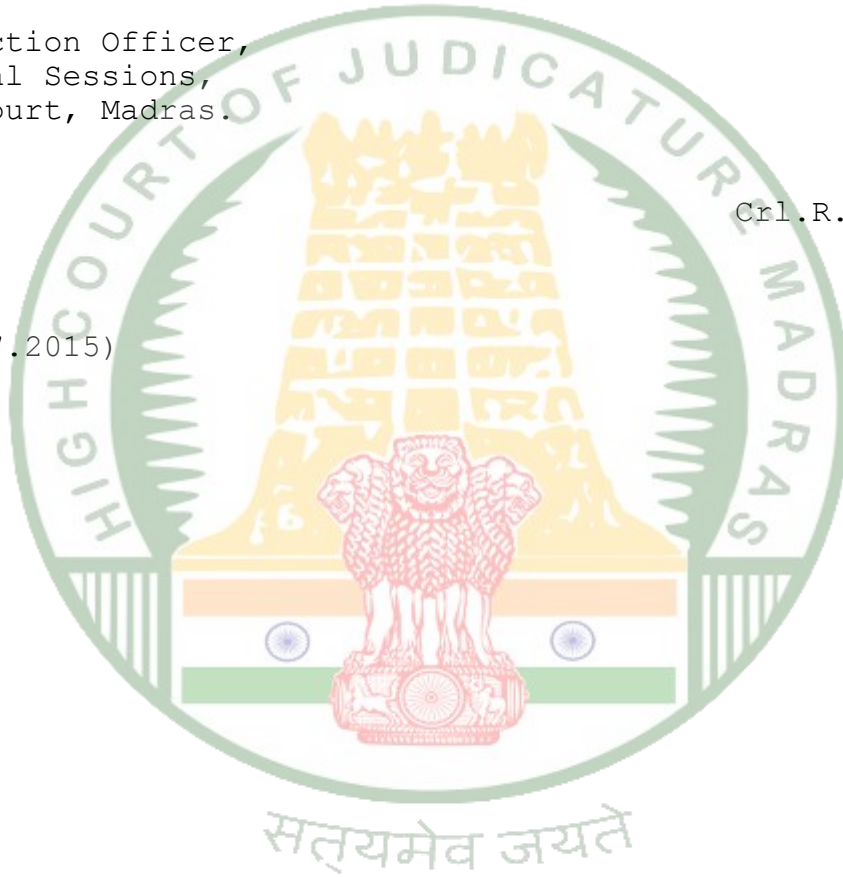
To

1. The Additional District and Sessions Judge
cum Fast Track Court No.2,
Chennai

2. -Do- Through The Principal Sessions Judge,
Chennai.
3. The VIII Metropolitan Magistrate,
George Town, Chennai.
4. -Do- Through The Chief Metropolitan Magistrate,
Egmore, Chennai - 8.
5. The Public Prosecutor,
Madras.
6. The Section Officer,
Criminal Sessions,
High Court, Madras.

Crl.R.C.No.164 of 2008

PPA (CO)
PSI (16.07.2015)



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