

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-07-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 986 of 2009
and
M.P.No. 1 of 2009

L.S.P.Finance Limited
Rep. by its Authorised Agent
S.Suresh
Son of P.R.Sampathkumar
No.281, Omalur Main Road
Salem-4.

.... Petitioner (Complainant)

Versus

K.Kannan

.... Respondent (Accused)

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. to call for the records in C.C.No.534 of 2005 on the file of the learned Judicial Magistrate No.II, Salem and set aside the order dated 18.08.2009 passed in C.M.P.No.2386 of 2009 on his file and allow the Criminal Revision Case

For Petitioner : Mr.V.Sai Ram

ORDER

The case of the petitioner/complainant is that one M/s.Aarthee Exports, a Firm, has borrowed a sum of Rs.10,00,000/- from the complainant by executing two promissory notes. On 01.10.2001, the respondent/accused is alleged to have executed a Letter of Guarantee (Ex.P.2) in favour of the complainant and also issued a cheque dated 29.09.2004 (Ex.P.5). Thus, according to the complainant, the accused as guarantor is jointly and severally liable to pay the debts. Since, the said Firm did not repay the amount, the complainant issued a legal notice. Though the Firm received the notice, they did not come forward to pay the money payable to the complainant and hence, the complaint. The case is taken on file in C.C.No.534 of 2005 on the file of the Judicial Magistrate-II, Salem. During trial, the petitioner/complainant has filed C.M.P.No.2386 of 2009 on the file of the Judicial Magistrate No.II, Salem, seeking to send the

document to handwriting expert for comparison of signature and for obtaining expert opinion. The said petition was dismissed. Questioning the correctness of the order dated 18.08.2009 passed in C.M.P.No.2386 of 2009 on the file of the Judicial Magistrate No.II, Salem, this Criminal Revision Case is filed by the complainant.

2. On 06.07.2015, when the matter was taken up, there was no representation for the petitioner and hence, the matter was directed to be posted on 09.07.2015 under the caption, "for dismissal". Even today, when the matter is taken up, learned counsel appearing for the petitioner is not present and on his behalf, Mr.K.Magesh, learned counsel represented the matter and sought for an adjournment, though, the case is listed today under the caption "for dismissal", this kind of practice is deprecated by the Hon'ble Apex in the judgment reported in (2013) 3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, and has held that the Court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so. The Hon'ble Apex Court in the said decision has culled out certain principles and in paragraph No.19 has held as follows:-

"19. From the aforesaid decision in Bani Singh vs. State of Uttar Pradesh, reported in (1996) 4 SCC 720, the principles that can be culled out are:

19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;

19.5. That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

In the light of the principles culled out in the judgment of the Hon'ble Apex Court cited supra, it is crystal clear that no doubt, the Court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so and further, the Court can decide the matter even in the absence of petitioner or his counsel, but, only criteria is that the case should be decided on merits in

the absence of the petitioner and the Court cannot dismiss an appeal for non-prosecution simpliciter without examining the case on merits. In the light of the decision cited supra, as the case is pending from 2009 and the petitioner is successful in dragging on the case, the main Criminal Revision Case itself is taken up and disposed of on merits, after perusing the materials available on record.

3. The only point which has been raised by the petitioner in the grounds of revision is that the Trial Court ought to have taken into consideration of the fact that the accused has denied his signature in Ex.P.2-Letter of Guarantee given by the accused and P.5-Cheque issued by the accused in favour of the complainant and therefore, the sending of the document to the handwriting expert for his opinion is essential.

4. On a careful perusal of the impugned order, it is seen that the Trial Court has dismissed the petition mainly on two grounds. Firstly, the petition seeking to send the documents for obtaining expert opinion have been filed without enclosing along with the petition the document executed during the contemporaneous period and the document containing the admitted signature of the petitioner. Secondly, in the cross-examination of complainant, no where, it is suggested that the signature in the cheque is not that of the accused and hence, the Court below finding that no useful purpose will be solved by sending the cheque for expert opinion has dismissed the petition. Hence, I do not find any reason to interfere with the reasoned order passed by the Trial Court and the same stands confirmed. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

5. The Trial Court is directed to take up the main case in C.C.No.534 of 2005 on the file of the Judicial Magistrate No.II, Salem, and dispose of the same, on merits and in accordance with law, as expeditiously as possible. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

paa

Sub Assistant Registrar

To

1.The Judicial Magistrate No.II,
Salem.

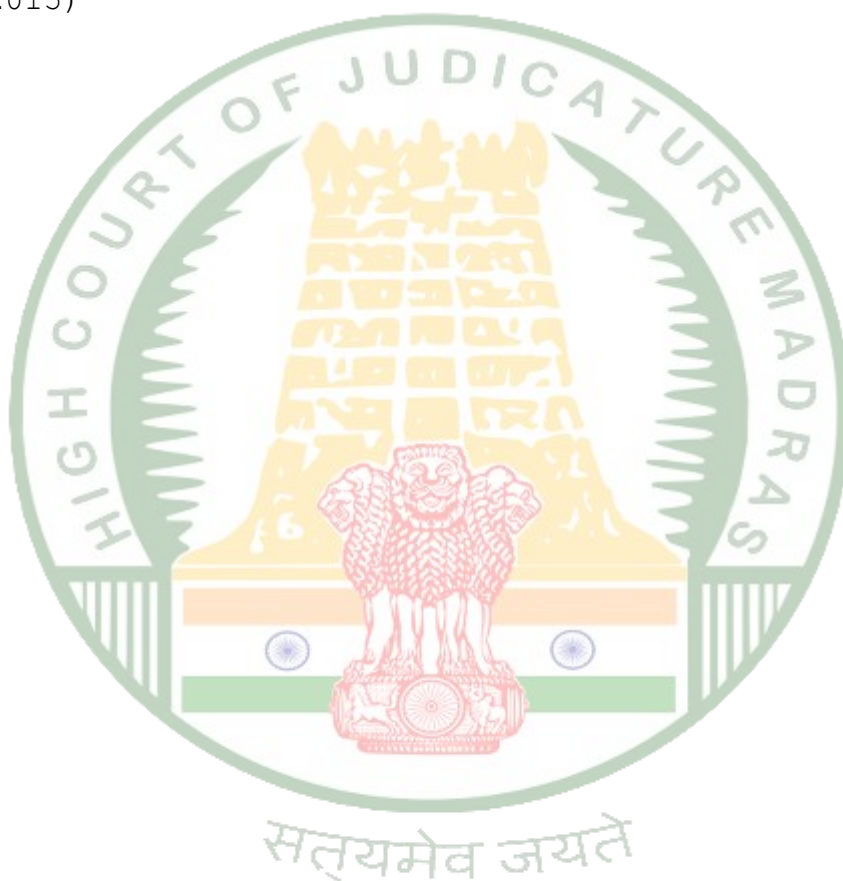
2.-Do- Through The Chief Judicial Magistrate,
Salem

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

Criminal Revision Case No. 986 of 2009

VD(CO)
CA(25/08/2015)



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