

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-06-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 704 of 2008

Lalchand
rep. by its Power of Attorney
A.M.Prakash Jain
No.38, Strollen Muthiah Street
Sowcarpet
Chennai-600 079.

...Petitioner/
Respondent/Complainant

Versus

Ranjeetmal Mehta
Mehtas Pharmaceuticals
No.131 Nainiappan Naicken Street
Chennai-600 003.

...Respondent/
Appellant/Accused

Criminal Revision Case filed under Sections 397 and Section 401 of Cr.P.C. against the judgment dated 21.11.2007 made in C.A.No.250 of 2006 on the file of the VI Additional Sessions Judge, City Civil Court, Chennai, reversing the conviction and sentence passed in order dated 01.02.2006 made in C.C.No.12423 of 2004 on the file of the VIII Metropolitan Magistrate, George Town, Chennai.

For Petitioner : Mr. N.S.Sivakumar

For Respondent : Mr. C.Vijayakumar

ORDER

This Criminal Revision Case is filed by the complainant against the judgment dated 21.11.2007 made in C.A.No.250 of 2006 on the file of the VI Additional Sessions Judge, City Civil Court, Chennai, reversing the conviction and sentence passed in order dated 01.02.2006 made in C.C.No.12423 of 2004 on the file of the VIII Metropolitan Magistrate, George Town, Chennai.

2. The case of the complainant is that the respondent/accused had borrowed loan from five financiers by executing five promissory notes for Rs.2,00,000/- each, dated 27.08.2004, 26.08.2004, 17.08.2004, 23.08.2004 and 18.08.2004 respectively, in the name of

the complainant/Lalchand, Sunil Kumar, Kavitha, Prakash Jain and Neelam Jain respectively. The said Financiers had endorsed the promissory notes in favour of the complainant. The respondent/accused had agreed to repay the amount and in order to discharge the debt along with interest, as a part liability had issued a cheque dated 05.10.2004 for Rs.10,15,000/-. When the cheque was presented for collection, it returned with an endorsement "insufficient funds". The complainant issued statutory notice dated 13.10.2004. Though the accused has received the notice, he has neither chosen to repay the cheque amount nor gave a reply. Hence, a complaint was preferred against the accused under Section 138 of Negotiable Instruments Act and the same was taken on file in C.C.No.12423 of 2004 on the file of the VIII Metropolitan Magistrate, George Town, Chennai. After trial, the Trial Court has found the accused guilty and convicted him for the offence under Section 138 of the Negotiable Instruments act and sentenced him to undergo simple imprisonment for six months and also directed the accused to pay a sum of Rs.10,15,000/- as compensation to the complainant within a month. Aggrieved against the same, the accused filed an appeal in C.A.No. 250 of 2006 on the file of the VI Additional Sessions Judge, City Civil Court, Chennai. The Lower Appellate Court, by judgment dated 21.11.2007, reversed the judgment of conviction and sentence passed by the Trial Court and remitted back the matter to Trial Court for fresh disposal. As against which, the complainant has preferred this Criminal Revision Case.

3. Mr.N.S.Sivakumar, learned counsel appearing for the petitioner/ complainant would contend that the Lower Appellate Court has remitted back the matter to the Trial Court for fresh disposal purely on the ground that the accused has filed two petitions to receive documents as well as to send for expert opinion to verify and to find out whether the signature of the accused found in the questioning under Section 313 Cr.P.C. is a genuine one or it was done by an impersonated person, for which, there is no basis, when the accused has accepted that the cheque and promissory notes were given by him and the finding is very clear, the Lower Appellate Court ought not to have remanded the matter, but, should have tried the case and disposed of the same and hence, he would contend that the remand order passed by the Lower Appellate Court is not correct.

4. Mr.C.Vijayakumar, learned counsel appearing for the respondent/ accused would mainly contend that it is the specific stand of the accused that the accused was impersonated in Court during the questioning under Section 313 Cr.P.C. He would further point out that according to the accused, at different point of time, different counsel were engaged at the behest of the complainant, therefore, the accused is not in a position to say anything regarding the signature found in the cheque and promissory notes, but, he stoutly denies that it is his signature. He would submit that when the promissory notes are in favour of different financiers and in that proper endorsement was not made, the Trial Court erroneously convicted the accused. He would further submit that the accused repaid the cheque amount, but, the cheque and promissory notes were

not returned to him and later, it was misused, therefore, he would contend that rightly the Lower Appellate Court has remitted back the matter to the Trial Court for fresh disposal.

5. Heard both sides. By consent, the main Criminal Revision Case itself is taken up for final disposal.

6. The main ground of attack made by the learned counsel appearing for the petitioner/complainant is that it is not the case even by the respondent/accused that the cheque and five promissory notes were given for one and the same transaction, but, it is the case of the accused, he availed loan from five different financiers, for which, the accused has executed a cheque and five promissory notes in favour of five different financiers, therefore, the whole allegations are not at all maintainable at this point of time and the Lower Appellate Court has wrongly come to the conclusion and remitted back the matter to the Trial Court for fresh disposal. Since, this Court is going to say that the order of remand passed by the Lower Appellate Court is correct is not going to deal with the merits of the case, because, any observation made in this order will affect the trial proceedings and therefore, without going into the merits of the case, only on the question of remand this Court is satisfied that prima facie doubt has been created by the respondent/accused and therefore, the Lower Appellate Court is right in coming to the conclusion that to give a chance to both parties the matter has to be remitted back to the Trial Court and accordingly, the Lower Appellate Court has remitted back the matter to the Trial Court, hence, I do not find any reason to interfere with the reasoned order passed by the Lower Appellate Court.

7. It is suffice to state that the Trial Court shall take up the case in C.C.No.12423 of 2004 on file and shall try the case independently and dispose of the same afresh along with the petitions seeking to receive the additional documents and to send the document for expert opinion, after giving sufficient opportunity of hearing to both parties and on merits and in accordance with law, as expeditiously as possible, without being influenced by any of the observations made in this revision or criminal appeal and to independently arrive at a conclusion. This Criminal Revision Case is disposed of accordingly.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The VI Additional Sessions Judge,
City Civil Court, Chennai.
2. -Do- Through The Principal Sessions Judge,
Chennai.
3. The VIII Metropolitan Magistrate,
George Town, Chennai.
4. -Do- Through The Chief Metropolitan Magistrate,
George Town, Chennai.

1 CC to Mr. N.S.Sivakumar, Advocate SR.No. 30631

1 CC to Mr. C.Vijayakumar, Advocate SR.No. 30614

Crl.R.C. No. 704 of 2008

UG (CO)
PSI (07.07.2015)



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