

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2016

(Orders Reserved on : 15.06.2016)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.1291 of 2015

V.P.Periyasamy ... Petitioner/Complainant

Vs.

K.Lakshmanakumar ... Respondent/Accused

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of the Code of Criminal Procedure, to set aside the judgment in C.A.No.97 of 2012, dated 17.09.2014 on the file of the learned Principal Sessions Judge, Salem, by remanding the matter for denova trial filed against the judgment passed in S.T.C.No.1835 of 2006 on the file of the learned Judicial Magistrate No.IV, Salem, and to allow the above criminal revision case.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.T.Muruganantham

ORDER

This Criminal Revision Case is directed against the order passed by the learned Principal Sessions Judge, Salem, in Crl.A.No.97 of 2012, dated 17.09.2014, remanding the matter for denova trial filed against the judgment passed in S.T.C.No.1835 of 2006 on the file of the learned Judicial Magistrate No.IV, Salem.

2. The brief facts of the case are as follows:-

The respondent herein borrowed a sum of Rs.2,65,000/- from the petitioner and issued a cheque dated 22.08.2003 for a sum of Rs.2,65,000/- in favour of the petitioner. When the said cheque was presented for collection, it was returned as 'insufficient funds'. Hence, the revision petitioner/complainant had issued a legal notice to the respondent/accused on 25.08.2003. The respondent had refused to

receive the said notice and hence, revision petitioner had instituted a complaint against the respondent under Section 138 of the Negotiable Instruments Act, before the learned Judicial Magistrate No.IV, Salem. The complaint was taken on file as S.T.C.No.1835 of 2006 by the learned Magistrate. The learned Judicial Magistrate No.IV, Salem, after hearing the arguments of both sides, convicted the respondent/accused for the offences under Sections 138 and 142 of the Negotiable Instruments Act and sentenced him to undergo one year rigorous imprisonment and imposed a fine of Rs.5,000/-, in default, to undergo one month simple imprisonment. As against the said conviction and sentence, the respondent/accused had preferred an appeal in CrI.A.No.97 of 2012 before the learned Principal Sessions Judge, Salem. The learned Principal Sessions Judge, Salem, after hearing the arguments of both sides, allowed the said criminal appeal and set aside the conviction and sentence passed by the learned Judicial Magistrate No.IV, Salem, and remanded the matter to the learned Judicial Magistrate No.IV, Salem, for fresh trial, according to law. As against the said order, the petitioner/complainant has preferred the present criminal revision case before this Court.

3. The learned counsel for the petitioner would mainly contend that the lower Appellate Court/Principal Sessions Judge, Salem, ought to have held that even though the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act was tried as summons case and not tried in a summary way as contemplated under Sections 262 to 265 of Cr.P.C., de nova trial is not necessary and the succeeding Magistrate can follow the procedure as stipulated under Section 326(1) of Cr.P.C., and hence, the order of the court below remanding the matter to the trial Court is not maintainable under law. The appeal was filed by the respondent/accused only to drag on the proceedings. Hence, the order of the First Appellate Court has to be set aside and the criminal revision case has to be allowed.

4. The learned counsel for the respondent would mainly contend that the learned Principal Sessions Judge, Salem, after hearing both parties, has correctly passed the order allowing the criminal appeal and there is no infirmity or illegality in the order passed by the learned Principal Sessions Judge, Salem and hence, the criminal revision case may be dismissed.

5. The learned Principal Sessions Judge, Salem, in his order dated 17.09.2014, in CrI.A.No.97 of 2012, at paragraph Nos.10 and 11, has held as follows:-

"10. At the request made by the appellant/accused when the appeal was posted for settlement, the appellant/accused had filed a petition in CMP No.2220/2014 on 12.06.2014 U/s 326

(3) Cr.P.C. Read with 143 of NI Act seeking to set aside the judgment and sentence passed by the trial Court and to remand the matter to the trial court for fresh trial stating that the chief examination of P.W.1, the complainant/respondent herein was recorded by one Magistrate and the cross-examination of P.W.1 was recorded by another Magistrate and the learned Judicial Magistrate, who pronounced the judgment, was not recorded the chief examination of the respondent/complainant and hence the act of the trial Court is wrong as per U/s 326(3) of Cr.P.C.

11. After hearing both sides and after perusing the case records and the rulings submitted by the appellant/accused the said petition in CMP No.2220/2014 was allowed by this court on 17.09.2014. Therefore the judgment and sentence passed by the lower court is liable to be set aside by allowing this appeal."

6. In this case, it is useful to refer Section 326 of Cr.P.C., which reads as follows:-

"326. Conviction or commitment on evidence partly recorded by one [Judge or Magistrate] and partly by another.- (1) Whenever any [Judge or Magistrate], after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another [Judge or Magistrate] who has and who exercises such jurisdiction, the [Judge or Magistrate] so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself.

Provided that if the succeeding [Judge or Magistrate] is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Code [from one Judge to another Judge or from one Magistrate to another Magistrate,] the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning of sub-section (1).

(3) Nothing in this section applies to summary trials or to cases in which proceedings have been stayed under section 322 or in which proceedings have been submitted to a superior Magistrate under section 325."

7. On a perusal of the records, it is clear that in this case, summary procedure was not followed by the trial Court under Sections 262 to 265 of Cr.P.C. and the regular procedure in conducting the criminal cases alone followed. Hence, de nova trial is not at all necessary. Hence, the order passed by the learned Principal Sessions Judge, Salem, in CrI.A.No.97 of 2012, dated 17.09.2014, is erroneous and the same is liable to be dismissed.

8. Accordingly, this Criminal Revision Case is allowed and the order dated 17.09.2014 passed by the learned Principal Sessions Judge, Salem, in C.A.No.97 of 2012, is set aside and the matter is remanded to the learned Principal Sessions Judge, Salem, for disposal according to law. The learned Principal Sessions Judge, Salem, is directed to dispose the appeal within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Salem.

2. The Judicial Magistrate No.IV,
Salem.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate Sr.48413

+1cc to Mr.T.Muruganantham, Advocate Sr.48611

CrI.R.C.No.1291 of 2015

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srg 12/09/2016