

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2016

(Orders Reserved on : 21.09.2016)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.237 of 2010

and

M.P.No.1 of 2010

M/s. Sree Balaji Cylinders Private Limited,
Rep. by its Authorised Signatory,
R.Manoharan,
Having its Registered Office at
No.41, M.G.R. Salai, Palavakkam,
Chennai - 600 041. ... Petitioner/Accused No.1

Vs.

M/s. Eagle Speed Service Private Limited,
Rep. by its Chief Executive Officer,
T.Sujit Kumar, S/o. T.Rajkumar,
Having its Registered Office at
No.15, Armenian Street,
Chennai - 600 001. ... Respondent/Complainant

Prayer: Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure, praying to call for the records and set aside the order passed by the V Additional Sessions Judge, Chennai, in Crl.M.P.No.10290 of 2008, in Crl.A.No.65 of 2007, dated 02.12.2009.

For Petitioner : Mr.K.R.Rameshkumar

For Respondent : Mr.K.P.Anantha Krishnan

ORDER

This Criminal Revision Case is preferred by the petitioner praying to call for the records and set aside the order passed by the learned V Additional Sessions Judge, Chennai, in Crl.M.P.No.10290 of 2008, in Crl.A.No.65 of 2007, dated 02.12.2009.

2. The facts leading to the criminal revision case are, briefly, as follows:-

The respondent/complainant has preferred a complaint before the learned VII Metropolitan Magistrate, George Town, Chennai, under Section 138 of the Negotiable Instruments Act and the case was taken on file as C.C.No.5194 of 2002. The learned Magistrate, after analysing the evidence and documents produced on either side, found the accused 1 to 3 guilty under Section 138 of the Negotiable Instruments Act and sentenced to undergo one year simple imprisonment and to pay a sum of Rs.1,66,500/- each as compensation to the respondent/complainant. As against the said judgment passed by the trial Court, the revision petitioner and two others have preferred an appeal before the learned V Additional Sessions Judge, Chennai, and the appeal was taken on file as Crl.A.No.65 of 2007. During the pendency of the said appeal, the revision petitioner had filed a petition in Crl.M.P.No.10290 of 2008 under Section 391 of Cr.P.C. before the learned V Additional Sessions Judge, Chennai, to take further evidence of P.W.1. The learned V Additional Sessions Judge, Chennai, dismissed the said petition on 02.12.2009. Aggrieved by the said order of dismissal, the present criminal revision case is preferred by the petitioner before this Court.

3. The learned counsel for the revision petitioner would mainly contend that the revision petitioner/accused No.1 had paid the cheque amount to the complainant on various dates during the course of trial and after the judgment. To prove the said fact, a petition under Section 391 of Cr.P.C. was filed by the revision petitioner. But, the trial Court, without considering the facts and circumstances of the case, erroneously dismissed the said petition. Hence, the order of the trial Court has to be set aside and the criminal revision case has to be allowed and the petitioner has to be permitted to examine P.W.1 to prove the fact of payment made by the revision petitioner.

4. The learned counsel for the respondent would contend that the trial Court, after considering the entire facts and circumstances of the case, came to a conclusion that the petitioner is not entitled to examine the prosecution witness and correctly dismissed the petition filed by the petitioner under Section 391 of Cr.P.C. and there is no illegality or infirmity in the order passed by the trial Court and hence, he prayed that the order of the trial Court has to be confirmed and the Criminal Revision Case has to be dismissed.

5. In this case, admittedly, in the grounds of revision, it is clearly stated by the petitioner that for establishing the fact of the cheque payment made by the petitioner on various

dates during the course of trial and after the judgment, he filed a petition under Section 391 of Cr.P.C., to examine P.W.1. Hence, from the above admission made by the revision petitioner, it is clearly established that on the date of filing of the complaint, admittedly, the cheque amount was not paid to the respondent/complainant. Even according to the revision petitioner, he has paid the cheque amount only during the course of trial and after the judgment passed by the trial Court for the offence under Section 138 of the Negotiable Instruments Act. According to the provisions of Negotiable Instruments Act, after the cheque was dishonoured, statutory notice has to be issued to the accused and after receipt of the statutory notice, the accused has to pay the amount within the stipulate period. But, in this case, admittedly, even according to the petitioner, the amount was paid only during the course of trial and after the judgment. Hence, the argument of the learned counsel for the petitioner that for proving the above said fact, P.W.1 has to be examined as a witness is not at all maintainable as per law. Further, there is no necessity to examine P.W.1, since the offence against the revision petitioner under Section 138 of the Negotiable Instruments Act is clearly established even according to the admission made by the revision petitioner. The trial Court, after considering the entire facts and circumstances of the case, correctly dismissed the petition filed by the petitioner under Section 391 of Cr.P.C.

6. In view of the above facts and circumstances of the case, this Court is of the considered view that there is no infirmity or illegality in the order passed by the trial Court. This Court finds no reason to interfere with the order of the trial Court which does not warrant any interference by this Court and hence, the criminal revision case is liable to be dismissed. Accordingly, this Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Jr1
To

1.The V Additional Sessions Judge,
Chennai.

2.-Do- Thro The Sessions Judge,
Chennai.

+1cc to Mr.K.P.Ananthakrishna, Advocate sr.63800
+1cc to Mr.K.R.Rameshkumar, Advocate sr.63611

Cr1.R.C.No.237 of 2010

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