

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 23.08.2016)

DATED : 16.09.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.A.No.381 of 2016
and
Crl.R.C.Nos.646 of 2015
and
Crl.O.P.No.16391 of 2015
and
Crl.M.P.No.1 of 2015 in Crl.R.C.No.646 of 2015
and
Crl.M.P.No.1 of 2015 in Crl.O.P.No.16391 of 2015

Dhanalakshmi ... Appellant in Crl.A. &
respondent in Crl.RC & Crl.OP.

Vs.,

M.C.Subramaniam ... Respondent in Crl.A &
Petitioner in Crl.RC & Crl.OP.

Criminal Appeal has been filed under Section 378 of Cr.P.C., against the order dated 16.11.2015 in S.T.C.No.381 of 2012 passed by the learned Judicial Magistrate, Fast Tract Court No.1, Erode, dismissing the complaint filed by the appellant and acquitting the accused.

Criminal Revision Case has been filed under Section 397 and 401 of Cr.P.C., against the order dated 08.06.2015 made in C.M.P.No.4330 of 2013 in S.T.C.No.381 of 2012 on the file of the learned Judicial Magistrate, Fast Tract Court No.I, Erode.

Criminal Original Petition has been filed under Section 482 of Cr.P.C. praying to call for the records relating to the order dated 08.06.2015 made in C.M.P.No.4870 of 2013 in S.T.C.No.381 of 2012 passed by the learned Judicial Magistrate, Fast Tract Court No.I, Erode and to set aside the same.

For appearance:-

Mr.I.C.Vasudevan, for the Appellant in Crl.A
& for the respondent in Crl.RC & Crl.OP.

Mr.N.Manokaran, for the respondent in Crl.A
& petitioner in Crl.RC & Crl.OP.

COMMON ORDER

The appellant in Crl.A.No.381 of 2016 is the complainant and the respondent in the said Appeal is the accused in S.T.C.No.381 of 2016 pending on the file of the learned Judicial Magistrate (FTC-I), Erode.

2.Since the issues involved in the above Appeal, Revision and the Criminal Original Petition are inter-connected with each other, they are disposed of by way of this common order. The parties are hereinafter referred to as the Complainant and the accused.

3.The complainant has filed a complaint against the respondent for the alleged offence under Section 138 r/w 142 of the Negotiable Instruments Act, stating that on 18.11.2011, for his urgent expenses, the respondent borrowed a sum of Rs.6 lakhs from the appellant; that to discharge the said loan amount, the respondent issued a post-dated cheque for Rs.6 lakhs, dated 27.04.2012, bearing No.394509, drawn on Indian Overseas Bank, Periyar Nagar Branch, Erode, in favour of the appellant; that when the same cheque was presented for collection on 27.04.2012 through Canara Bank, V.H.Road, Erode Branch, the same was returned with an endorsement 'Opening Balance Insufficient' on 28.04.2012. Hence, the complainant issued a lawyer notice on 22.05.2012 to the respondent calling upon him to pay the cheque amount of Rs.6 lakhs, within fifteen days. Though the respondent received the notice, he failed to repay the loan amount. Hence, the complainant preferred the private complaint, which was taken on file as S.T.C.No.381 of 2012 on the file of the learned Judicial Magistrate (FTC-I), Erode.

4.In S.T.C.No.381 of 2012, the accused has taken out two applications. One in C.M.P.No.4330 of 2013 filed under Section 45 of Cr.P.C., seeking to send the disputed cheque along with the vakalat signed by him, to the Handwriting Expert for comparing the signatures, stating that the signature found in the disputed cheque does not belong to the respondent herein;

that there is difference between the signatures of the respondent found in the Vakalat and the disputed cheque. But, the said petition was dismissed by the Court below stating that the Vakalat was filed much later to the issuance of the disputed cheque; therefore, for the verification of the signatures, the dispute cheque and the Vakalat cannot be sent to the Handwriting Expert. Aggrieved over the same, the accused has filed the present Crl.R.C.No.646 of 2015.

5.The accused filed another petition in C.M.P.No.4870 of 2013 seeking permission of the Court to file the statement of accounts of the accused from 01.01.2008 to 30.06.2012 and also to send for the cheques bearing No.394512, dated 23.02.2012, No.394514, dated 09.06.2012, No.55477 dated 23.02.2012 and No.55480 dated 26.04.2012, drawn on Indian Overseas Bank, Periyar Nagar Branch, Erode. But, the Trial Court allowed the accused only to file the statement of accounts of the accused/respondent from 01.01.2008 to 30.06.2012 and rejected the prayer of the accused to send for the above said cheques issued by the accused, stating that the accused has not given any valid reason to send for the said cheques. Aggrieved over the same, the accused has filed the present Criminal Original Petition ie., Crl.O.P.No.16391 of 2015.

6.Subsequently, on 16.11.2015 the private complaint in S.T.C.No.381 of 2016 itself was dismissed by the learned Judicial Magistrate (FTC-I), Erode, for the non-prosecution of the complainant. Hence, the complainant has filed the present appeal before this Court.

7. It is submitted by the learned counsel for the complainant that the complainant was regular in attending the Court on all hearing date; that she was absent on 16.11.2010 as she went abroad for taking treatment for her illness; but, the Court below dismissed the complaint. Thus, the learned counsel for the complainant sought for setting aside the impugned order dismissing the complaint.

8.The learned counsel for the accused submitted that in the event of this Court allowing the appeal filed by the complainant, a direction may be given to the Court below to send for the cheques bearing No.394512, dated 23.02.2012, No.394514, dated 09.06.2012, No.55477 dated 23.02.2012 and No.55480 dated 26.04.2012, drawn on Indian Overseas Bank, Periyar Nagar Branch, Erode, and also to send the disputed cheque along with the said cheques to the Handwriting Expert for the purpose of comparing the signatures.

9. Heard both sides and perused the materials available on record.

10. In view of the submissions made on either side, this Court is of the opinion that in the interest of justice, one more chance could be given to the appellant to put forth her case, by allowing the appeal. Accordingly, the impugned order dated 16.11.2015 passed by the Court below dismissing the complaint is set aside and the appeal is allowed. The Court below is directed to restore the complaint on file and to proceed with the same, in accordance with law.

11. So far as the petition filed by the accused under Section 45 of Cr.P.C., is concerned, the Court below has dismissed the said petition stating that the vakalat was filed only at a much later point of time and as such the disputed cheque cannot be sent along with the vakalat for comparing the signatures. Absolutely, I do not find any infirmity in the said finding rendered by the Court below.

12. But, at the same time, it is the submission of the learned counsel for the accused (in respect of C.M.P.No.4870 of 2013) that he has made prayer to send for the cheques bearing No.394512, dated 23.02.2012, No.394514, dated 09.06.2012, No.55477 dated 23.02.2012 and No.55480 dated 26.04.2012, drawn on Indian Overseas Bank, Periyar Nagar Branch, Erode, and also to send the disputed cheque along with the said cheques to the Handwriting Expert for the purpose of comparing the signatures. The learned counsel for the petitioner submitted that the Trial court by calling for the said cheques, ought to have sent the disputed cheques along with the above said cheques for expert's opinion. I find that the said submission of the learned counsel for the petitioner appears to be reasonable, since the cheques to be called for from the Bank and the disputed cheques are pertaining to the contemporary period. The said prayer of the accused could be considered.

13. Accordingly, in the interest of justice, the impugned orders dated 08.04.2015 passed by the Court below are set asides and the Court below is directed to send for the cheques bearing No.394512, dated 23.02.2012, No.394514, dated 09.06.2012, No.55477 dated 23.02.2012 and No.55480 dated 26.04.2012, drawn on Indian Overseas Bank, Periyar Nagar Branch, Erode, and also to send the disputed cheque along with the said cheques to the Handwriting Expert for the purpose of comparing the signatures and to get the opinion of the Handwriting Expert for the purpose of deciding the case.

In fine, the Criminal Appeal is allowed. Similarly, the Criminal Revision Case as well as the Criminal Original Petition are allowed on the above terms. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To,

1.The Judicial Magistrate,
Fast Track Court No.I, Erode.

2.The Chief Judicial Magistrate,
Erode.

+3cc to Mr.N.Manogaran, Advocate Sr.52768, 52769, 52767

+1cc to Mr.I.C.Vasudevan, Advocate Sr.52849

Crl.A.No.381 of 2016
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Crl.R.C.Nos.646 of 2015
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Crl.M.P.No.1 of 2015
in Crl.R.C.No.646 of 2015
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srg 18/10/2016

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