

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.1113 of 2016
and
Crl.M.P.No.12231 of 2016

Shanthi
W/o.Thiyagarajan

... Petitioner

Vs.

R.Anandhi
D/o.Chakrapani

... Respondent

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the judgment of learned District and Sessions Judge, Chengalpattu, passed in C.A.No.64 of 2012 on 05.03.2016 confirming the judgment of learned Judicial Magistrate, Fast Track Court, Alandur, passed in C.C.No.275 of 2011 on 09.10.2012.

For Petitioner : Mr.N.R.Elango, senior counsel
for Mr.S.Saravanakumar
For Respondent : Mr.M.Shak Mohamed Ali

ORDER

This revision arises against two concurrent judgments of Courts below convicting the petitioner for offence u/s.138 of the Negotiable Instruments Act and sentencing him to 6 months S.I. and fine of Rs.5,000/- i/d 1 month

S.I. as also directing him to pay a sum of Rs.50,000/- as compensation i/d 1 month S.I.

2. Heard learned counsel for petitioner and learned counsel for respondent.

3. Without going into the merits of the contentions raised by learned counsel on either side, this Court finds that in disposing of the appeal in C.A.No.64 of 2012, the facts which had received the consideration of the appellate Court are

“18. As per the above citations, this case has to be dealt with. Now the first question to be decided is whether the above debt is a legally enforceable debt or not and whether the complainant discharged his onus of burden of proof on the accused. As far as this case is concerned, the appellant/accused not come forward to depose any evidence on his side, whereas the son of the accused namely Yuvaraj is examined as RW1 and he in his evidence stated that he has given a sum of Rs.10,00,000/- to the complainant to complete the film and that the said film was completed but failed to yield any profit and hence huge loss occurred. As far as the complainant case is concerned, on perusal of Ex.P3, it is a confirmation letter given by the appellant to the respondent dated 07.6.2010 stating that he is giving two cheques Ex.P4 towards the discharge of the loan borrowed by him. The above said document itself is self sufficient to prove that the

accused admitted his liability and to discharge the legally enforceable debt. Hence the above said admission itself proves that there is no rebuttable presumption arises and that the cheques were not supported by legal enforceability as contended by the appellant.

19. The main contention of the appellant is that the above cheques were issued in the month of February 2010 and that the cheque period expires in the month of August 2010 itself, whereas the cheque was presented only on 08.04.2011 and that the complaint is not maintainable under Section 9 of General Clauses Act and prayed to dismiss the complaint. ...”

The facts under consideration of the appellate Court, above reproduced, do not relate to the case on hand. The instant is a case where a cheque allegedly had been issued by petitioner on 05.04.2010 in a sum of Rs.3,06,000/- in favour of respondent/complainant, the parties being related.

4. It becomes necessary for this Court to set aside the order under appeal and remand the appeal for fresh consideration on merits and for a decision upon the facts that attend the case.

5. The Criminal Revision Case shall stand allowed. The judgment of learned District and Sessions Judge, Chengalpattu, passed in C.A.No.64 of 2012 on 05.03.2016, shall stand set aside. Connected miscellaneous petition is closed.

C.T.SELVAM, J

gm

As it is brought to notice that the same Presiding Officer, who disposed of C.A.No.64 of 2012 under judgment dated 05.03.2016 continues, it would but be appropriate that the appeal in C.A.No.64 of 2012 is heard afresh by some other Judge. Accordingly, this Court directs that C.A.No.64 of 2012 shall stand remitted back to learned Principal Sessions Judge, Chengalpattu, who shall hear the matter afresh and decide the same within a period of one month from the date of receipt of this order.

29.11.2016

Index:yes/no
Internet:yes/no
gm

To

- 1.The District and Sessions Judge,
Chengalpattu.
- 2.The Judicial Magistrate,
Fast Track Court,
Alandur.

Crl.R.C.No.1113 of 2016
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