

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.687 of 2016

and Crl.MP.Nos.4895 and 4896 of 2016

D.Joseph

.. Petitioner

Vs.

Nagamunusamy

.. Respondent

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 18.03.2016 passed by the learned VII Additional Sessions Judge, Chennai made in Crl.A.No.79 of 2015 confirming the order dated 26.03.2015 passed by the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore, Chennai made in CC.No.1550 of 2011.

For Petitioner : Mr.Shrenik Raj

For Respondent : Mr.A.V.Radha Krishnan

ORDER

This Criminal Revision is directed against the order passed by the learned VII Additional Sessions Judge, Chennai made in Crl.A.No.79 of 2015, dated 18.03.2016 confirming the order passed by the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore, Chennai made in CC.No.1550 of 2011, dated 26.03.2015.

2.The brief facts leading to filing of the present revision are as follows :-

The revision petitioner/accused approached the complainant for a personal loan to the tune of Rs.4,00,000/- for his business purposes. Considering his request, the complainant granted Rs.4,00,000/- on 11.03.2009. The accused executed demand promissory note for Rs.4,00,000/-, to discharge the above said loan amount, the accused executed a cheque bearing No.269753 dated 09.01.2011 in favour of the complainant. Ex.P2/Cheque was presented for collection on 20.01.2011, the

same was returned with an endorsement "funds insufficient" on 21.01.2011. The complainant issued statutory legal notice on 02.02.2011 through registered post with acknowledgement card, the accused received the said legal notice on 08.02.2011, the accused has not replied to the said notice nor repaid the due amount. Hence, the complainant preferred private complaint before the X Metropolitan Magistrate, Egmore, Chennai, the trial Court after considering the entire facts and circumstances and after analysing the evidences adduced on either side comes to a conclusion that the accused is found guilty under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one year and to pay the compensation of Rs.4,00,000/- to the complainant within three months from the date of order, in default to undergo simple imprisonment for three imprisonment. Aggrieved against the said order of the trial Court, the accused preferred criminal appeal before the learned VII Additional Sessions Judge, Chennai in CrI.A.No.79 of 2015, the first appellate Court after analysing the entire documents and evidences adduced on both sides, confirmed the order of the trial Court and dismissed the appeal preferred by the accused. Aggrieved over the said order, the accused preferred the criminal revision before this Court.

3.The learned counsel for the revision petitioner/accused contended that the Courts below without considering the facts and circumstances of the case erroneously, found accused guilty under Section 138 of the Negotiable Instruments Act, awarded the conviction and sentence, both the Courts below has not followed the principles laid down by the Hon'ble Apex Court regarding the onus of proof under the Negotiable Instruments Act. The Courts below ought to have held that the present complainant has not proved the source of income to lend loan to the revision petitioner. Further contended that the signature of the accused in the postal acknowledgement is not proved on the side of the petitioner, there is no issuance of statutory notice is also proved. Hence, the learned counsel prays to set aside the order of the Courts below and to allow the revision petition.

4.The learned counsel for the respondent would mainly contend that the Courts below after considering the entire facts and circumstances of the case comes to a correct conclusion, the averments of the legal presumption under Section 118 and 139 of the Negotiable Instruments Act, found accused guilty under Section 138 of the Negotiable Instruments Act and awarded punishment accordingly. There is no illegality or infirmity in the order of the Courts below and the learned counsel for the respondent prays for dismissal of the revision petition.

5.Heard the rival submissions made on both sides and perused the records.

6.In this case, the revision petitioner denied the signature in the cheque. The main contention is that there is no statutory notice was issued to the revision petitioner/accused, to respondent has not proved that he has complied with the provisions of the Negotiable Instruments Act. According to the revision petitioner, the complainant issued legal notice through Advocate, notice was also duly served on the address of the accused, the copy of the legal notice is marked as Ex.P5 and the postal acknowledgement card dated 08.02.2011 was also marked as Ex.P6, on the side of the complainant. After serving copies to the counsel for the revision petitioner/accused, the learned counsel for the respondent produced typed set of papers containing the documents viz., postal receipt, acknowledgement card, letter given to the postal authority and the reply given by the Senior Superintendent of Post office, Chennai.

7.On plain reading of the Ex.P5 the notice was addressed to the revision petitioner/Joseph on 07.02.2011. The learned counsel for the respondent filed postal receipt issued by the postal department and the letter issued by the learned counsel for the respondent to the Post Master, Ayanavaram and the reply given by the Senior Superintendent of Post office, Chennai. The learned counsel for the respondent mainly contended that the notice was issued to the complainant to the proper address, for which he has also produced the documents and he has also received the postal acknowledgement, but it does not contain any seal of the post office. In view of the above circumstances, the statutory notice was not properly issued by the complainant to the accused.

8.The learned counsel for the revision petitioner/accused objected the above documents and submitted that the revision petitioner/accused has to be given an opportunity to cross examine with regard to the above document, if the documents are marked at the revision stage, without giving an opportunity to the revision petitioner/accused the documents cannot be looked into and it will affect the interest of the revision petitioner/accused.

9.Considering the facts and circumstances of the case, this Court is of the considered view, the typed set of papers produced on the side of the respondent/complainant is necessary to prove the case of the complainant, this Court is not inclined to consider the documents produced on the side of the

respondent, without giving opportunity to the revision petitioner/accused. This Court is of the view, the order passed by the trial Court and as confirmed by the first appellate Court are liable to be set aside and the same is hereby set aside.

10. In the result, the criminal revision is allowed, by setting aside the order passed by the trial Court and as confirmed by the first appellate Court, the matter is remanded back to trial Court for fresh disposal, in accordance with law. The trial Court is directed to dispose of the main case preferably within a period of four weeks from the date of receipt of copy of this order, after giving opportunity to both sides to adduce oral and documentary evidence. Consequently, connected miscellaneous petitions are closed.

11. Registry is directed to return the typed set of papers filed by the respondent containing original documents viz., postal receipt, letter given to the postal authority and the reply given by the Senior Superintendent of Post Office, Chennai. tsh

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1 The VII Additional Sessions Judge, Chennai.

2 The Metropolitan Magistrate, Fast Track Court No.I, Egmore, Chennai.

3 The X Metropolitan Magistrate, Egmore, Chennai

4 The Chief Metropolitan Magistrate, Chennai

COPY TO: The Section Officer

Criminal Section High Court Chennai

- 1 cc to Mr.S.Shrenik Raj, Advocate Sr.No.57010
- + 1 cc to Mr.A.V.Radhakrishnan, Advocate Sr.No.56969

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CA(CO)

RRI 16/11/2016