

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2017

Coram

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl. R.C.No.36 of 2017
and Crl.M.P.No.404 of 2017

M.S.Kumar

... Petitioner/Accused

//vs//

K.Ramachandran

.... Respondent/Complainant

Prayer: Criminal Revision Petition filed under Section 397 and 401 of the Code of Criminal Procedure to set aside the order dated 21.12.2016 made in Crl.M.P.No.2771 of 2015 in C.A.No.25 of 2015 on the file of I Additional Sessions Judge, Thiruvallur.

For Petitioner : M/s K.V.Sridharan

For Respondent : Mr.D.Gubendraguna Balan

ORDER

Challenging the Order, dismissing the petition filed in C.M.P.No.2771 of 2015 in C.A.No.25 of 2015 under Section 391 Cr.P.C. seeking to adduce additional documentary evidence before the court below, the present Revision Case has been filed.

2 . The grievance of the petitioner is that, he has filed a Private complaint under Section 138 of Negotiable Instruments Act in S.T.C.No.642 of 2014 and the trial court by judgment dated 02.03.2015, convicted the petitioner and sentenced him to undergo two months Simple Imprisonment and also to pay the cheque amount of Rs.2,50,000/- as compensation to the respondent. Challenging the same, the petitioner filed an appeal in C.A.No.25 of 2015 on the file of I Additional Sessions Court, Tiruvallur. Pending appeal, he filed a petition under Section 391 of Cr.P.C seeking to adduce the earlier notice sent by the petitioner dated 05.05.2010, as additional documentary evidence. The above application has been filed on the ground that the complainant is a tenant of the premises under the accused, wherein he was doing business. Since the complainant

suffered loss in his business, he sold the entire goods available in the shop to the petitioner for a sum of Rs.8,50,000/- and also received a sum of Rs.5,00,000/- from him. For the remaining amount, he had obtained a cheque for a sum of Rs.2,50,000/- bearing No.005925, drawn on Central Bank of India, Palliagraharam, from the petitioner and subsequently, the petitioner also paid the entire amount. But, the complainant did not return the cheque. Therefore, taking advantage of the possession of the cheque in question, the respondent had started threatening the petitioner. While so, the petitioner issued a legal notice dated 05.05.2010 to the respondent, demanding to return the cheque. Instead of returning the cheque, the respondent presented the same for collection, which was returned as "insufficient funds", thereafter, the respondent issued a legal notice dated 01.11.2010, for which the petitioner also sent a suitable reply dated 12.11.2010, reiterating the position. Unfortunately, during trial, the notice sent by the petitioner dated 05.05.2010 was omitted to be marked. However, the acknowledgment for the receipt of the notice by the respondent has been marked as Ex.D3 and the respondent also accepted the receipt of the notice dated 05.05.2010, during his cross examination. Since the petitioner did not file the above notice during trial, he filed the application in the Appeal seeking to adduce the said notice dated 05.05.2010 as additional documentary evidence. The trial court dismissed the application on the ground that even though sufficient opportunities were given to the petitioner, he did not choose to mark the said notice dated 05.05.2010 before trial court, but only in order to drag on the proceedings, he has filed the present petition. Challenging the same, this Criminal Revision Case has been filed.

3. Heard Mr.K.V.Sridharan, learned counsel for the petitioner.

4. It is an admitted fact that the petitioner had issued a notice dated 05.05.2010 to the respondent and the respondent had also admitted in his cross examination that he had received the notice dated 05.05.2010 and the acknowledgment was marked as Ex.D3. I find justification in the argument of the learned counsel for the petitioner that due to oversight, the document has been omitted to be marked by the learned counsel during trial. In the light of the above fact and circumstances of the case, this court is of the opinion that an opportunity should necessarily be given to the petitioner to prove his defence, by receiving an additional documentary evidence. No prejudice will be caused to the respondent, if the additional evidence is recorded, as he had already admitted the receipt of the notice dated 05.05.2010 and acknowledgment Ex.D3. In the above circumstances, the impugned order dated 21.12.2016 passed in CrI.M.P.No.2771 of 2015 in C.A.No.25 of 2015 by the learned I Additional Sessions Judge, Tiruvallur is required interference at the hands of this court.

5. In the result, the Criminal Revision Case is allowed and the order dated 21.12.2016 passed in CrI.M.P.No.2771 of 2015 in C.A.No.25 of 2015 by the learned I Additional Sessions Judge, Tiruvallur is set aside. The petitioner is permitted to adduce the notice dated 05.05.2010 as additional documentary evidence in the appeal pending before the I Additional Session Court, Tiruvallur in C.A.No.25 of 2015 and the learned Additional Sessions Judge is directed to give opportunity to the petitioner to cross examine the respondent with regard to the said notice. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

mst

To

1.The I Additional Sessions Judge,
Tiruvallur.

2.The Chief Judicial Magistrate,
Tiruvallur

3.The Judicial Magistrate,
Fast Track Court, Ambattur

+lcc to M/s K.V.Sridharan, Advocate in sr.no.41807

CrI.R.C.No.36 of 2017

VGII(CO)
NR 20/11/2017

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