

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

Crl. Revision Case Nos.663 & 664 of 2017

&

Crl. M.P. No.6261 & 6262 of 2017

A.J. Seetharaman

.. Petitioner in both RC

Versus

Shakthidharan

.. Respondent in both RC

Prayer in Crl.R.C.No.663 of 2017 :- Criminal Revision Cases filed under Section 397 and 401 of the Criminal Procedure Code to call for the records pertaining to the orders dated 16.03.2017 and 04.04.2017 in C.M.P. No.1053 of 2016 on the file of the District Munsif-cum-Judicial Magistrate, Uthiramerur and set aside the same.

For Petitioner in both cases

: Mr.V. Parthiban
for Mr. A. IlayaPerumal

For Respondent in both cases

: Mr. S. Magesh Kumar,
Legal Aid Counsel.

COMMON ORDER

Both the revisions have been filed challenging the orders passed by the learned District Munsif-cum-Judicial Magistrate, Uthiramerur, in C.M.P.No.1053 of 2016 dated 04.04.2017 & 16.03.2017.

2. The petitioner herein is the accused in a private complaint filed by the respondent under section 138 of the Negotiable Instruments Act. The respondent filed a private complaint with a delay of 44 days and he also filed an application under section 142(b)(i) of the Negotiable Instruments Act to condone the delay in filing the private complaint. The court below ordered that the application would stand allowed on the petitioner paying a sum of Rs.1000/- to the District Legal Service Authority, Chengalpet on or before 03.04.2017, failing which the petition would stand automatically dismissed.

3. Admittedly, the respondent failed to pay the cost within the stipulated time. But on 04.04.2017, the respondent filed a petition under section

with the order, to pay the cost.

4. Thereafter, the Court below without any notice to the petitioner, allowed the application on 06.04.2017 on the ground that the respondent had paid the amount to the District Legal Service Authority, Chengalpet, on 05.04.2017 and allowed the memo filed by the respondent and thereby condoned the delay. Now challenging the same, the petitioner filed the present revision.

5. Eventhough notice was served on the respondent, none appeared on behalf of the respondent and hence, Mr.S.Magesh Kumar, learned counsel was appointed as legal aid counsel for the respondent.

6. I have heard the learned counsel appearing for the petitioner and Mr. S. Magesh Kumar, learned Legal Aid Counsel, appearing for the respondent.

7. The learned counsel appearing for the petitioner would contend

<http://www.judis.nic.in> that by order dated 16.03.2017, the Court below ordered that the application

would stand allowed on the petitioner paying the cost on or before 03.04.2017. Since the respondent failed to pay the amount on or before 03.04.2017, the petition stood automatically dismissed on 03.04.2017 and thereafter, the Court below has become functus officio and that has no power to extend the time for payment. Hence, the order passed by the Court below is without jurisdiction. He, in support of his contention, relied on a judgment of the Hon'ble Supreme Court reported in **AIR 2001 SUPREME COURT 2145 (State of Kerala /vs/ M.M.Manikantan Nair)**.

8. Per contra, the learned counsel appearing for the respondent would contend that due to some compelled circumstances, the respondent was not in a position to pay the cost and on the very next day, i.e., on 04.04.2017, he filed a memo before the Court below and also paid the cost on 05.04.2017. Having considered the case of the respondent, the Court below allowed the application on 05.04.2017 and there is no illegality in the order passed by the Court below.

9. I have considered the rival submissions and perused the materials available on records carefully.

10. No doubt the petitioner was bound to pay the cost on or before 03.04.2017. But, he failed to do so. Thus, the petition stood dismissed on 04.04.2017 and therefore, the Court below had become functus officio and it has got no power to take up the matter and allow the application, that too, on an application filed under Section 309 Cr.P.C. The order of the Court below was clearly in contravention of the provisio under Section 362 of Cr.P.C., which prohibits the Court from altering or reviewing the judgment or order, except to correct the clerical mistakes.

11. In a judgment reported in the case of State of Kerala /vs/ M.M.Manikantan Nair in **AIR 2001 Supreme Court 2145**, the Hon'ble Supreme Court has held as follows:-

“The Code of Criminal Procedure does not authorise the High Court to review its judgment or order passed either in exercise of its appellate, revisional or original jurisdiction. Section 362 of the Code Prohibits the Court after it has signed its judgment or final order disposing a case from altering or reviewing the said judgment or order

except to correct a clerical or arithmetical error. This prohibition is complete and no criminal Court can review its own judgment or order after it is signed. By the first order dated 31.05.2000, the High Court rejected the prayer of the respondent for quashing the criminal proceeding. This order attained its finality. By the impugned order, the High Court reversed its earlier order and quashed the criminal proceeding for want of proper sanction. By no stretch of imagination it can be said that by the impugned order the High Court only corrected any clerical or arithmetical error. In fact the impugned order is an order of review, as the earlier order was reversed, which could not have been done as there is no such provision under the Code of Criminal Procedure, but there is an interdict against it. “

12. But in the instant case, since the respondent failed to pay the cost in pursuance of the earlier order, the petition stood dismissed on 03.04.2017. Thereafter, the Judicial Magistrate had no power to review or alter his own order. Hence, the impugned order, no doubt, is illegal, suffers from

illegality and without jurisdiction which calls for interference at the hands of this

Court.

13. In the light of the above, both the Criminal Revision Cases are allowed and the order passed by the Court below is set aside. Consequently, connected miscellaneous petition is closed.

14. While parting with this case, I appreciate the services rendered by Mr. S.Magesh Kumar, learned counsel, who appeared on behalf of the respondent/accused, as a legal aid counsel. The legal services authority is directed to pay his remuneration as per rules.

28.06.2017

mrp/ nl

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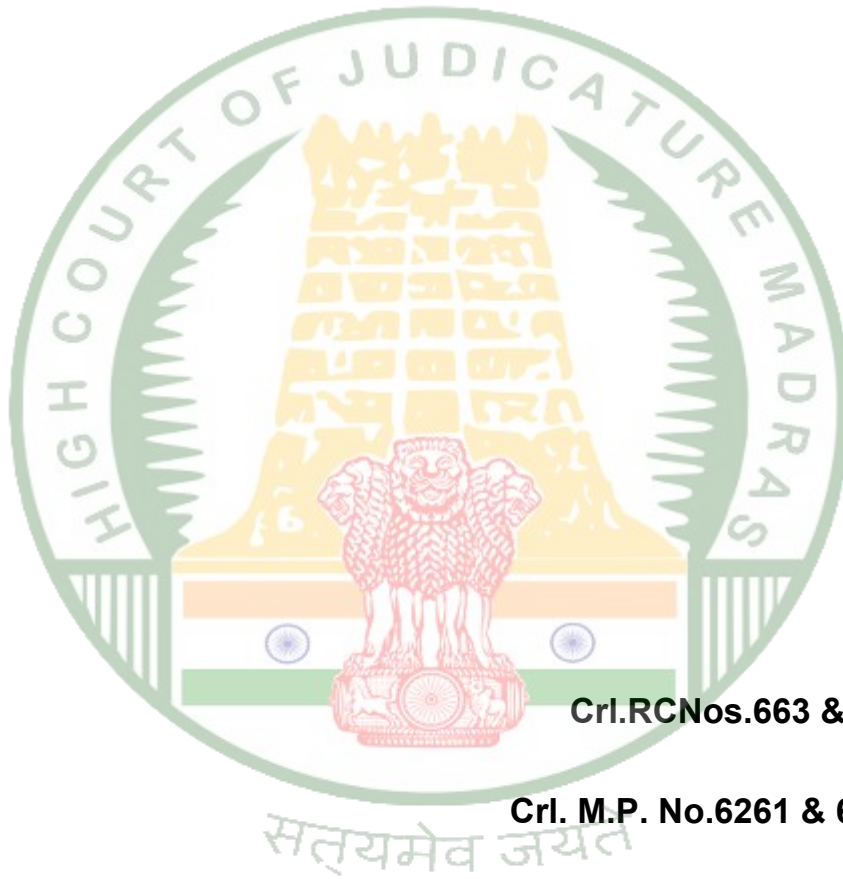
To

1) District Munsif-cum-Judicial Magistrate,
Uthiramerur.

2) The Public Prosecutor,
High Court,
Madras.

V. BHARATHIDASAN, J.

mrp/nl



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