

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.No.1165 and 1180 of 2015
M.P.No.1 and 1 of 2015

A.J.Seetharaman ... Petitioner
in both Crl.R.Cs.

Vs

M.V.Bhavani Shankar ... Respondent
in both Crl.R.Cs.

Prayer:- Criminal revisions filed under Section 397 & 401 of Cr.P.C., to set aside the orders dated 16.10.2008 made in Crl.M.P.No.3898 of 2015 in C.C.No.84 of 2008 and Crl.M.P.No.3899 of 2015 in C.C.No.85 of 2008 by the Principal District Munsif cum Judicial Magistrate, Vandavasi (FAC).

For petitioner : Mr.V.Parthiban
in both cases. for Mr.J.C.Durairaj

For Respondent : Mr.A.Arokiadass
in both cases.

O R D E R

This petition has been filed by the petitioner against the orders dated 16.10.2008 made in Crl.M.P.No.3898 of 2015 in C.C.No.84 of 2008 and Crl.M.P.No.3899 of 2015 in C.C.No.85 of 2008 by the Principal District Munsif cum Judicial Magistrate, Vandavasi (FAC).

2.The petitioner is an accused in a private complaint in C.C.Nos.84 and 85 of 2008 for an offence under Section 138 N.I. Act. The above private complaint has been filed on the ground that the petitioner herein, in order to discharge his liability, has issued a cheque dated 20.02.2008 for Rs.10,00,000/- and another cheque on 22.08.2008 for Rs.2,50,000/- respectively. When the cheques were presented for collection, the cheques were returned as 'Funds insufficient' and after completing the legal formalities, the complainant has filed the complaint before the Judicial Magistrate, Vandavasi.

3.The Judicial Magistrate, after considering the complaint and other materials, being satisfied that a prima facie case is made out against the petitioner, took the matter on file in C.C.No.84 of 2008 and C.C.No.85 of 2008 and issued process under section 204 Cr.P.C. Since the trial was pending for a long time from the year 2008, the respondent/complainant filed a petition before this Court seeking direction to the Trial Court to complete the trial expeditiously and this Court by an order dated 30.06.2015 in CrI.O.P.No.15919 of 2015, directed the trial Court to complete the trial within two months from the date of receipt of copy of the order. Thereafter, the Trial commenced and P.W.1 was examined. At that time, the petitioner/accused filed petitions in CMP.Nos.3898 and 3899 of 2015 under section 204 Cr.P.C. to drop the entire proceedings against him on the ground that there are two legal notices issued by the complainant, the first notice on 25.09.2008 and another was sent on 01.11.2008, and according to the petitioner, the statutory notice was issued beyond the time prescribed in the Act, the complaint is barred by limitation and the complaint is not maintainable, and the Court below cannot take cognizance of the offence. The Court below dismissed the petitions holding that as per the direction of this Court, trial has been commenced and P.W.1 was already examined, at this stage, the petitioner/accused filed applications to drop all further proceedings, and this being a legal issue it can be raised at the time of arguments. Challenging the above order, the present revisions have been filed.

4.I have heard Mr.V.Parthiban, learned counsel representing for Mr.J.C.Durairaj, learned counsel appearing on behalf of the petitioner and Mr.A.Arokiadoss, learned counsel appearing on behalf of the respondents and perused the records carefully.

5.First of all, the present petition itself is not maintainable in law. Once the Judicial Magistrate has taken cognizance of offence and on examination of complaint and the witnesses, satisfied that there is sufficient ground to proceed with complaint and issued process under Section 204 Cr.P.C., the Court has no power to drop the proceedings, based on the petition filed by the accused for reconsideration material available on record. The Hon'ble Supreme Court in the case of Adalat Prasad Vs. Rooplal Jindal reported in 2004(7)SCC 338 has held as follows:

"But after taking cognizance of the complaint and examining the complainant and the witnesses if he is satisfied that there is sufficient ground to proceed with the complaint he can issue process by way of summons under section 204 of the Code. Therefore what is necessary or a condition precedent for issuing process under section 204 is the

satisfaction of the Magistrate either by examination of the complainant and the witnesses or by the inquiry contemplated under section 202 that there is sufficient ground for proceeding with the complaint hence issue the process under section 204 of the Code. In none of these stages the Code has provided for hearing the summoned accused, for obvious reasons because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provision in the Code. It is true as held by this Court in Mathew's case before issuance of summons the Magistrate should be satisfied that there is sufficient ground for proceeding with the complaint but that satisfaction is to be arrived at by the inquiry conducted by him as contemplated under sections 200 and 202, and the only stage of dismissal of the complaint arises under section 203 of the Code at which stage the accused has no role to play therefore the question of the accused on receipt of summons approaching the court and making an application for dismissal of the complaint under section 203 of the Code for a reconsideration of the material available on record is impermissible because by then Section 203 is already over and the Magistrate has proceeded further to Section 204 stage."

5. In the above circumstances, the Court below rightly dismissed the petition and there is no irregularity in the order passed by the Court below, and hence the Revision Petition is liable to be dismissed. Accordingly, it is dismissed. Consequently, connected miscellaneous petition is also closed.

6. However, it is open to the petitioner to raise all the legal points available to him during the course of the trial. Since the matter is pending from the year 2008 and P.W.1 was also already examined in chief, the Court below is directed to proceed with the trial and complete the trial within six weeks from the date of receipt of copy of this order.

-s/d-
Assistant Registrar(CSIV)

True Copy

Sub-Assistant Registrar

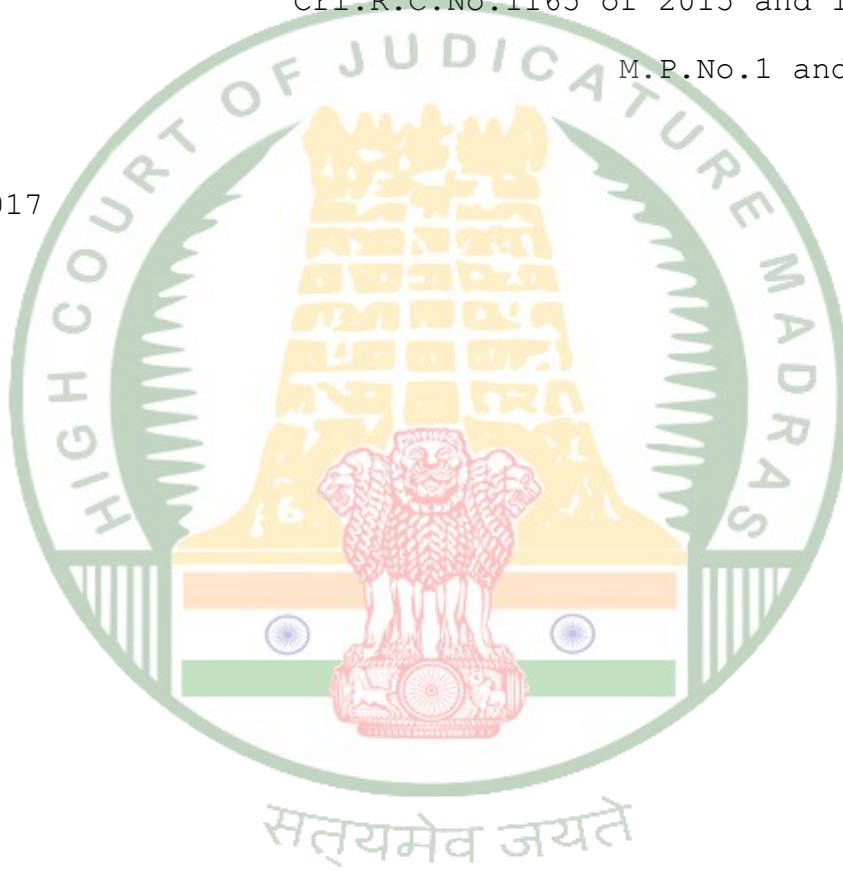
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To
The Principal District Munsif cum
Judicial Magistrate,
Vandavasi (FAC).

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