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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2017

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C(MD).Nos.772 and 773 of 2011

and

MP(MD)Nos.1 & 1 of 2011

S.T.Latha

... Petitioner in both Crl.R.Cs.

Vs

R.Miller

... Respondent in Crl.R.C(MD)No.772/11

Aruna

... Respondent in Crl.R.C(MD)No.773/11

Prayer : Criminal Revision Cases filed under Section 397 r/w 401 to call for and examine the records on the file of the Fast Track Court, Virudhunagar pursuant to the orders passed in M.P.Nos.91 and 119 of 2011 dated 19.07.2011 in C.A.Nos.13 and 16 of 2011 respectively and revise the same.

For Petitioner : Mr.K.Sundaravel  
(both cases)

For Respondents : Mr.S.Kirubavijayanand  
(Crl.R.C(MD)No.772/2011)  
Mr.Pon Karthikeyan  
(Crl.R.C(MD)No.773/2011)

COMMON ORDER

Challenging the orders allowing the applications filed under Section 391 Cr.P.C., these Criminal Revision Cases have been filed.

2.The respondents herein are the husband and wife who have been shown as accused Nos.1 and 2 in the complaint given by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 in C.C.No.16 of 2006 on the file of the Judicial Magistrate Court No.I, Virudhunagar. The trial Court convicted both the accused and sentenced them to undergo six months simple imprisonment and to pay twice the cheque amount as compensation. Challenging the same, C.A.Nos.45 and 53 of 2011 have been preferred on the file of the Principal District Sessions Court, Virudhunagar District at Srivilliputhur. Pending Appeals, the first accused has filed an application in M.P.No.119/2011 to recall DW2 and the second accused has filed an application in M.P.No.91/2011 to recall PW1. The above applications have been filed on the ground that no opportunity was given to them to cross examine the witnesses. The Court below allowed both the applications. Challenging the same, the present Criminal Revision Cases have been filed.



3.I have heard Mr.K.Sundaravel, learned counsel for the petitioners and Mr.S.Kirubavijayan and Mr.Pon Karthikeyan, learned counsel for the respondents and perused the records carefully.

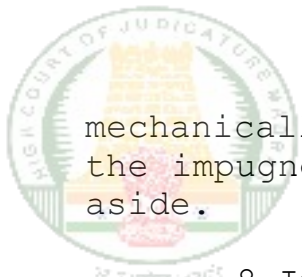
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4.The learned counsel appearing for the petitioner would contend that during trial, PW1, the husband of the defacto complainant was cross examined by both the accused and after the evidence was closed, the first accused filed a petition under Section 391 Cr.P.C., The above application was allowed and he was permitted to cross examine PW1. So far as DW2 is concerned, he was examined by the second accused and he was also cross examined by the complainant. But the first accused/wife did not want to cross examine DW2. Hence his evidence was closed. Apart from that, in the petition filed under Section 391 Cr.P.C., no reason was stated as to why both the witnesses have to be cross examined once again. The trial Court without considering the facts in proper perspective, has mechanically allowed the petitions. Challenging the same, the present Criminal Revision Cases have been filed.

5.Per contra, the learned counsel appearing for the respondents submitted that even though PW1 was already cross examined, some vital aspects were not put to him and in order to bring out the real fact, they want to cross examine him, so far as DW2 is concerned, the first accused was not given sufficient opportunity to cross examine him. Hence, they filed petitions under Section 391 Cr.P.C. The trial Court after considering the materials available on record has rightly allowed the petitions and there is no infirmity in the orders passed by the Court below.

6.From the perusal of the records, it could be seen that both the accused are husband and wife. During trial PW1 was cross examined by both the accused and thereafter, once again, by an application filed by the first accused, PW1 was recalled and he was cross examined again on 14.05.2010, and so far DW2 is concerned, the first accused, his wife did not want to cross examine him and hence his evidence was closed.

7.Considering the fact that already PW1 was cross examined by both the accused and once again PW1 was recalled on the application filed by the first accused and cross examined, sufficient opportunity was already given to him before the trial Court and there is no necessity to cross examine him at the appellate stage. So far as DW2 is concerned, during trial the first accused did not want to cross examine him and hence, it is not open to the first accused to file an application to recall DW2. Apart from that, from the perusal of the petitions filed by the first accused, no reason whatsoever has been stated for recalling those witnesses at the appellate stage. But the Court below without considering the case in proper perspective, has



mechanically allowed the petitions. In the above circumstances, the impugned orders passed by the Court below are liable to be set aside.

8. In fine, these Criminal Revision Cases are allowed. The impugned orders passed in M.P.Nos.91 and 119 of 2011 dated 19.07.2011 in C.A.Nos.13 and 16 of 2011 by the Fast Track Court, Virudhunagar are set aside. Since the appeals are pending from the year 2011, the lower appellate Court is directed to dispose of the appeals within a period of three months from the date of receipt of a copy of this order. Consequently, MP(MD)Nos.1 and 1 of 2011 are closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

The Fast Track Court, Virudhunagar

+1cc to M/S.M.Karthikeyavenkitachalapathy, Advocate SR.No. 68725  
+1cc to M/S.R.Pon Karthikeyan, Advocate SR.No. 68061

Cr1.R.C(MD)Nos.772 and 773 of 2011  
27.07.2017

mj

JM/MR KKR/SAR 2/17.08.2017/3P/4C