

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl. Revision Case No.372 of 2018
and
Crl.M.P.Nos.4530 & 4531 of 2018

J.Damodharan ... Petitioner/ Accused

vs

G.Nallathambi ... Respondent/ Complainant

Prayer : Criminal Revision Petition filed under Section 397 read with 401 of the Code of Criminal Procedure against the order passed by the learned Principal Sessions Judge, Thiruvallur passed in C.A.No.18 of 2017 on 07.09.2017 confirming the judgment of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur, passed in S.T.C.No.11 of 2016 dated 29.12.2016.

For Petitioner : M/s.S.Swamidoss Manokaran
For respondent : Mr.B.Vijay

ORDER

This revision challenges the order of the learned Judicial Magistrate, Fast Track Court, Ambattur, Chennai made in S.T.C.No.11 of 2016 dated 29.12.2017.

2. The case of the petitioner is that the petitioner/accused borrowed a sum of Rs.20,00,000/- from the respondent/complainant towards repayment cheque bearing No.000008 dated 03.08.2015 for Rs.8,00,000/- and another cheque bearing No.000009 dated 12.08.2015 for Rs.12,00,000/- drawn on H.D.F.C.Bank, Prakasam Salai Branch, stood issued to him and the same was returned unpaid for the reason "insufficient funds". Respondent/ caused notice and after following the procedures envisaged under Section 138 of the Negotiable Instruments Act, complaint had been filed.

3. Before the trial Court, respondent/complainant was examined as P.W1 and eleven documents were marked as Exs.P.1 to P11. Petitioner/accused and other witnesses were examined as R.W.1 to R.W.4 and marked Ex.R1 alone.

4. On appreciation of materials before it, the trial Court, under judgment dated 29.12.2016 in S.T.C.No.11 of 2016 convicted the petitioner and sentenced him to undergo five months S.I and to pay a compensation of Rs.20,00,000/-, i.e., the cheque amount to be paid to the complainant, in default, to undergo one month S.I. There against the said order, the petitioner preferred C.A.No.18 of 2017 on the file of the learned Principal District and Sessions Judge, Tiruvallur, and the same was dismissed, due to non-appearance of the petitioner/accused. Hence, the petitioner has filed the present criminal revision before this Court.

5. The learned counsel for the respondent would submit that the petitioner/accused is having involved in more than 14 cases and the petitioner has not appeared before the trial Court. Hence he prays for dismissal of this revision.

6. Time and again, this Court and the Hon'ble Apex Court very categorically held that the appeal should not be dismissed merely, because of non-appearance of the parties, but the trial Court has not passed detailed speaking order.

7. Considering the facts and circumstances of this case, both the counsel have agreed to proceed the case before the Appellate Court. Therefore, in order to give one more opportunity to the petitioner/appellant in the appeal in C.A.No.18 of 2017, the impugned order dated 07.09.2017 made in C.A.No.18 of 2017 is liable to be set aside and the same should be remanded back to the Appellate Court viz., Principal District and Sessions Judge, Tiruvallur, for fresh disposal and in accordance with law.

8. In view of the above, this Court is inclined to pass the following orders:

i) The Criminal Revision is allowed and the impugned order in C.A.No.18 of 2017 on the file of the Principal District and Sessions Judge, Tiruvallur dated 07.09.2017 is set aside and the case is remanded to the said Court.

ii) On condition that the petitioner shall pay a sum of Rs.25,000/- to the learned counsel for the respondent, within a week from the date of receipt of a copy of this order.

iii) The learned Principal District and Sessions Judge, Tiruvallur, is directed to dispose of the appeal on merits and in

accordance with law, within a period of one month from the date of compliance of this Court order.

iv) Both the parties are directed to co-operate for expeditious trial on day to day basis within the time limit fixed by this Court.

iv) The learned Principal District and Sessions Judge, Tiruvallur is directed to pass orders and to report the same before this Court, within ten days from the date of passing the Judgment.

This criminal revision is allowed with the above direction. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Judicial Magistrate,
Fast Track Court, (Magisterial Level)
Ambattur, Chennai.
2. The Principal District and Sessions Judge,
Tiruvallur.
3. The Public Prosecutor, High Court Madras.

+1cc to Mr.R.Ganesh, Advocate, S.R.No.21195

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NMI (CO)

RRK (22/03/2018)