

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 18.04.2018]

[Pronounced on : 18.07.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.419 of 2018

and

Crl.M.P.No.5100 of 2018

V. Gunasekaran ... Petitioner/Complainant

.. Vs ..

B.Chakravarthi ... Respondent/Accused

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. seeking to set aside the order of remand dated 31.10.2017 passed in Criminal Appeal in No.163 of 2017 by the learned Additional Sessions Judge, Magalir Neethimandram, (Fast Track Mahila Court) of Erode, and confirm the judgment dated 01.06.2017 passed in S.T.C.No.514 of 2012 on the file of the learned Judicial Magistrate, Fast Track Court No.1, Erode.

For Petitioner : Mr.V.S.Kesavan

For Respondent : Mr.M.Guruprasad

ORDER

This Criminal Revision Case is directed against the judgment dated 31.10.2017 passed by the learned Additional Sessions Judge, Magalir Neethimandram, (Fast Track Mahila Court), Erode, in Criminal Appeal in No.163 of 2017, allowing the appeal filed by the respondent herein/accused and remitting the matter back to the learned Judicial Magistrate, Fast Track Court No.I, Erode, with further direction contained therein.

2. The facts of the case is that the revision petitioner herein/complainant had preferred a private complaint stating that the respondent herein/accused had borrowed loan for a sum of Rs.5,50,000/- on 07.05.2012 from the complainant and to discharge the said liability, the accused had given three cheques under Ex.P.1 viz., cheque dated 06.06.2012 for

Rs.2,00,000/-, cheque dated 06.06.2012 for Rs.2,00,000/- and another cheque dated 06.06.2012 for Rs.1,50,000/-, totally for Rs.5,50,000/- and when the complainant had presented the above said three cheques for encashment on 20.06.2012 and 21.06.2012, the same were returned as "Funds Insufficient" on 21.06.2012 vide Ex.P.2 (S.1 to S.3) return memo. Even though the complainant had issued Ex.P.3-statutory notice to the accused on 20.07.2012, the notice sent to the office address of the accused was received by him on 21.07.2012 and the accused has refused to receive the notice which was sent to his house address. The said returned postal cover is Ex.P.6. Thereafter, the accused did not pay the cheque amount and not send any reply notice. Therefore, the complainant has preferred a complaint against the respondent herein/accused under Section 138 of the Negotiable Instruments Act.

3. The learned Judicial Magistrate No.II, Erode, has taken cognizance of the offence in S.T.C.No.3719 of 2012 after following the procedure. Since the respondent/accused pleaded not guilty, the trial Court examined P.W.1 and marked Exs.P.1 to P.6 on the side of the complainant and on the side of the accused, there was no oral or document evidence. The trial Court, after considering the oral and documentary evidence of the revision petitioner/complainant, convicted the respondent herein/accused for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for six months and also ordered to pay a sum of Rs.5,50,000/- towards compensation to the complainant by the accused, in default, to undergo simple imprisonment for one month.

4. Before the Lower Appellate Court, on behalf of the respondent herein/accused, it was contended that no proper opportunity was given for cross-examination of P.W.1 to elucidate whether there was legally enforceable debt and hence, sought for re-trial.

5. On the contrary, it appears that the learned counsel for the revision petitioner herein/complaint pointed out that the petition in C.M.P.No.2153 of 2017 filed by the accused under Section 311 of Cr.P.C. for further cross-examination of P.W.1 was dismissed by the learned Judicial Magistrate, Fast Track Court No.I, (Magisterial Level), Erode.

6. After perusing the evidence of P.W.1-Gunasekaran, the Lower Appellate Court has noticed that only four questions were put to P.W.1 in the cross-examination and there was no proper opportunity given to the accused for further cross-examination and therefore, allowed the criminal appeal filed by the respondent/accused. The operative portion of the judgment

passed by the learned Additional Sessions Judge, Magalir Neethi Mandram, Erode, reads as follows:-

"1. I allowed this appeal, set aside the order of conviction passed by the trial Court in S.T.C.No.514 of 2012 dated 1.6.2017.

2. I remit back this case to the trial Court with direction to the trial Court to give opportunity to the accused to further cross examine the P.W.1 in a particular date. The accused must further cross examine the P.W.1 on the day on which the trial Court fixed for cross examine of P.W.1 and no further adjournment is to be required by the accused whatever may be the reason. If the accused not come forward to cross examine the P.W.1 on the particular day fixed for it, the trial Court may proceeds this case. After giving opportunity to the accused for further cross examine the P.W.1 the trial Court is to hear the arguments if any put forth by both side counsels and dispose this cases afresh."

7. Challenging that order of re-trial, the revision petitioner/complainant has preferred this criminal revision case.

8. Learned counsel appearing for the revision petitioner/complainant would contend that on an earlier occasion, several opportunities were given to the respondent/accused. However, he has ran away from the Court and evaded to attend the Court and hence, further evidence was closed and the case was posted for arguments. At this juncture, the C.M.P.No.2153 of 2017 filed by the accused for further cross-examination of P.W.1 was also dismissed on 06.04.2017 and the accused has not preferred any revision against the said order and hence, the order passed by the lower Appellate Court is erroneous and prayed for setting aside the order.

9. Learned counsel appearing for the respondent/accused would contend that fair trial includes fair opportunity for cross-examination of P.W.1.

10. After hearing both the parties and after perusing the records, I find that only four formal questions have been put to P.W.1 in the cross-examination and hence, in order to elucidate whether there was legally enforceable debt or not, it is necessary that P.W.1 has to be cross-examined by recalling him. However, taking note of the previous conduct of the respondent/accused, the lower Appellate Court has carefully

considered the interest of the petitioner/complainant and also specifically stated in the impugned order that on the date fixed for further cross-examination, no further adjournment has to be granted to the accused and if the accused has not come forward for cross-examination of P.W.1 on the particular date, the trial Court may proceed with the case which was found to be on the fair side and accordingly, I am of the considered view that the operative portion of the order viz., sub paragraph No.2 of paragraph No.10 of the impugned order, in all fairness, is in the advancement of the fair trial and hence, I am not inclined to entertain the present criminal revision case. Accordingly, this Criminal Revision Case is dismissed.

11. Registry is directed to send a copy of this order and other connected materials to the trial Court, within a period of fifteen days from the date of order copy made ready and the trial Court, as directed by the Lower Appellate Court, shall fix a date for cross-examination of P.W.1 and on that date, without giving any further adjournment, shall complete the trial and proceed thereon and to dispose of the main case in S.T.C.No.514 of 2012, within a period of twelve weeks from the date of receipt of a copy of this order. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Jr1

To

1. The Additional Sessions Judge,  
Magalir Neethimandram,  
Fast Track Mahila Court,  
Erode.

2. The Judicial Magistrate,  
Fast Track Court No.1,  
Erode.

+1cc to Mr.V.S.Kesavan, advocate sr.no.47721

+1cc to Mr.M.Guruprasad, Advocate sr.no.48398

Cr1.R.C.No.419 of 2018

nr 07/08/2018