

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.Nos. 402 to 404 & 519 of 2011

S.Hameed Bi ... Petitioner
in all criminal revision
petitions

Vs.

J.Tamilvanan ... Respondent
in Crl.R.C.Nos.402 & 403 of 2011

T.Revathi ... Respondent
in Crl.R.C.Nos.404 & 519 of 2011

Criminal Revisions filed under Sections 397 and 401 of Cr.P.C., against the judgment dated 31.10.2008 in C.A.Nos.82, 83, 84 & 85 of 2005 respectively on the file of the Additional District and Sessions Court (FTC No.1) Salem, on the memos filed by the petitioner and the respondent.

For Petitioner : Mrs.P.V.Rajeswari

For Respondents: Mr.R.Nalliyappan

COMMON ORDER

These criminal revisions have been preferred seeking to set aside the conviction made by judgment dated 31.10.2008 in C.A.Nos.82, 83, 84 & 85 of 2005 respectively on the file of the Additional District and Sessions Court (FTC No.1) Salem, on the memos filed by the petitioner and the respondent.

2 For the sake of convenience, the parties will be referred to by their name.

3 The brief facts leading to the filing of these criminal revision petitions are as under:

3.1 Hameed Bi initiated two prosecutions in C.C.No.55 of 2002 and C.C.No.56 of 2002 under Section 138 of the Negotiable

Instruments Act, 1881 (for brevity "the NI Act") before the Judicial Magistrate No.3, Salem, against Tamilvanan. She also initiated two prosecutions in C.C.No.57 of 2002 and C.C.No.58 of 2002 before the Judicial Magistrate No.3, Salem, against Revathy, the wife of Tamilvanan.

3.2 While so, one Kalifulla initiated a prosecution in C.C.No.36 of 2002 before the Judicial Magistrate, Chidambaram, under Section 138 of the NI Act against Tamilvanan and Revathy. It was the grievance of Tamilvanan that the prosecution in C.C.No.36 of 2002 should be conducted simultaneously with the prosecution in C.C.Nos.55 to 58 of 2002 pending before the Judicial Magistrate No.3, Salem, on the ground that he had issued all the five cheques to one Moinudeen Sheriff and that Moinudeen Sheriff had set up Hameed Bi and Kalifulla to file the prosecutions in Salem and Chidambaram.

3.3 Therefore, Tamilvanan filed Crl.O.P.No.21877 of 2002 before this Court for transfer of C.C.No.36 of 2002 from the file of the Judicial Magistrate, Chidambaram to the file of the Judicial Magistrate No.3, Salem, for simultaneous trial along with C.C.Nos.55 to 58 of 2002. This Court, by order dated 28.11.2003, allowed Crl.O.P.No.21877 of 2002 and ordered the transfer of C.C.No.36 of 2002 from the file of the Judicial Magistrate, Chidambaram to the file of the Judicial Magistrate No.3, Salem, to be tried simultaneously with C.C.Nos.55 to 58 of 2002. Unfortunately, the case records in C.C.No.36 of 2002 were not transferred to the file of the Judicial Magistrate Court No.3, Salem, for reasons unknown.

3.4 Tamilvanan and his wife Revathy filed certain applications under Section 311 Cr.P.C. in C.C.Nos.55 to 58 of 2002 before the Judicial Magistrate No.3, Salem, to recall and examine some witnesses. These petitions were dismissed by the learned Judicial Magistrate No.3, Salem, challenging which, Tamilvanan and Revathy approached this Court by filing Crl.O.P.Nos.1336 to 1339 of 2005. While disposing of the above petitions on 21.02.2005, this Court issued the following direction to the Judicial Magistrate No.3, Salem:

"This Court is of the considered opinion that on the earlier occasion, this Court has passed an order directing the trial Court to try all the five cases simultaneously and it could be quite evident that such order was passed only for the purpose of appreciation of evidence. Under such circumstances, opportunity has got to be given, despite delayed notice to the accused to cross-examine PW1 and ends of justice would also require the same and hence the order of the lower Court has got to be set

aside in order to give opportunity to the petitioners to cross-examine PW1 in all the cases, by awarding Rs.1000/- in each case payable by the petitioners to the respondent within a period of one week here from. The order of the lower Court is set aside and opportunity is given to the petitioners to cross examine PW1 in all the four cases and also in the fifth case in the usual course. The lower Court is also directed to dispose of the case within a period of three months here from on merits and in accordance with law."

3.5 Pursuant to the orders passed by this Court in Crl.O.P.Nos.1336 to 1339 of 2005, the recalled witness, viz., Hameed Bi (PW1) appeared for further cross-examination by the accused and she was cross-examined only in part and accused Tamilvanan and Revathy were repeatedly taking adjournments for cross-examination. Even during that time, the records in C.C.No.36 of 2002 from the file of the Judicial Magistrate, Chidambaram, had not reached the file of the Judicial Magistrate Court No.3, Salem. Since, this Court, by order dated 21.02.2005, directed the Judicial Magistrate No.3, Salem, to dispose of all the cases within three months, the learned Magistrate gave further opportunities to the accused Tamilvanan and Revathy. Since they did not avail of the same, he passed final judgments on 23.05.2005 in all the four cases separately convicting and sentencing Tamilvanan and Revathy. In fact, the Judicial Magistrate No.3, Salem, in paragraph No.15 of his judgment, has stated as follows:

"15. On 18.05.2005, both parties were present. Complainant's side arguments heard. No arguments were put forward on behalf of the accused and the case adjourned to 19.05.2005. On 19.05.2005, the new counsel for the accused raised the same plea of simultaneous trial of the transferred case in C.C.No.71 of 2004 along with the trial of the cases in C.C.Nos.55 to 58 of 2002. In my considered view is that, this plea is raised vexatiously and hence is not tenable in view of the specific direction of the Hon'ble High Court passed in Crl.O.P.No.1336 to 1339 of 2005 in which his Lordship also pleased to refer the earlier Crl.O.P.No.21877 of 2002. The specific direction is for trial of C.C.No.71 of 2004 in the usual course and hence the plea of the simultaneous trial is repeatedly raised without any substance with the only idea of

dragging on the trial of the cases. Further the Hon'ble High Court has directed to dispose the four cases in C.C.Nos.55 to 58 of 2002 within three months from the date of the order passed on 21.02.2005 in the above Crl.O.P.No.1336 to 1339 of 2005. The time granted by the Hon'ble High Court as above expires on 21.05.2005. Hence, I am not inclined to consider the plea of a simultaneous trial."

3.6 Challenging the conviction and sentence, Tamilvanan and Revathy filed C.A.Nos.82 to 85 of 2005 before the Court of Session and the appeals were made over to the Additional District and Sessions Judge (FTC No.1) Salem, for hearing.

3.7 On notice, Hameed Bi entered appearance in all the four appeals. During the hearing of the four appeals, Tamilvanan and Revathy filed individual memorandum dated 14.10.2008 contending that the learned Judicial Magistrate No.3, Salem, should not have passed final judgment in the four cases and should have waited for the records to come from the Judicial Magistrate Court, Chidambaram in C.C.No.36 of 2002 and therefore, the matter must be remanded to the Judicial Magistrate No.3, Salem, for re-hearing along with the transferred case.

3.8 Now, it may be necessary to state the circuitous route that was taken in C.C.No.36 of 2002. The case records in C.C.No.36 of 2002 from the file of the Judicial Magistrate Court, Chidambaram, were sent to the Judicial Magistrate No.2, Salem, instead of the Judicial Magistrate No.3, Salem and it got locked there. The case was re-numbered as C.C.No.535 of 2006 by the Judicial Magistrate No.2, Salem and trial commenced. Only during the middle of the trial, the Judicial Magistrate No.2, Salem, realized that the case should have been heard by the Judicial Magistrate No.3, Salem and therefore, he obtained orders from the Chief Judicial Magistrate and had it administratively transferred to the Court of Judicial Magistrate No.3, Salem and now, the said case is pending on the file of the Judicial Magistrate Court No.3, Salem. The Additional Sessions Court (FTC No.1) Salem, allowed the memoranda filed by Tamilvanan and Revathy on 31.10.2008 by passing the following order:

".....Both memos have been recorded with a direction to comply the order of the Hon'ble High Court by giving an opportunity to the appellant to cross-examine Pws in all the five cases and trial Court is directed to dispose of these matters within three months from the date of receipt of this order."

3.9 Challenging the above order, Hameed Bi is before this Court in these four criminal revision petitions.

4 Heard Mrs.P.V.Rajeswari, learned counsel appearing for Hameed Bi and Mr.R.Nalliyappan, learned counsel appearing for Tamilvanan and Revathy.

5 This Court gave its anxious consideration to the rival submissions.

6 In the opinion of this Court, the Sessions Court ought not to have just like that remanded the four cases to the Judicial Magistrate No.3, Salem, because, there was no order by the High Court for joint trial, but, there was only an order for simultaneous trial. Unlike the Code of Civil Procedure which permits joint trial, in the Code of Criminal Procedure, concept of joint trial is unknown. In cases arising under "case and counter case category", the trial Court is required to take separate evidence in both the cases and deliver independent judgments. In this case, the learned Judicial Magistrate No.3, Salem, was required to comply with the directions issued by this Court in the order dated 21.02.2005 and complete the trial within three months. The non-receipt of records from the Court of Judicial Magistrate, Chidambaram was not the fault on the part of the Judicial Magistrate No.3, Salem.

7 That apart, in the judgments in C.C.Nos.55 to 58 of 2002, convicting Tamilvanan and Revathy, the trial Court has considered the orders passed by the High Court and only thereafter, it has passed the judgments on 23.05.2005. Therefore, it cannot be stated that the Judicial Magistrate No.3, Salem, was unaware of the directions of this Court. He has assigned good reasons as to why he was not in a position to wait indefinitely for the records from the Judicial Magistrate, Chidambaram, in C.C.No.36 of 2002.

8 In such circumstances, the Appellate Court ought not to have remanded the matters back to the trial Court. In a criminal case, the evidence in one case cannot be read into another case, because, the Court is required to analyze the evidence in each case independently, though the parties may be common.

9 In such view of the matter, these criminal revision petitions are allowed and the judgments passed by the learned Additional District and Sessions Judge (FTC No.1) Salem, dated 31.10.2008 in C.A.No.82 to 85 of 2002, are hereby set aside and the appeals are restored on file for fresh disposal in accordance with law.

The parties are to be present before the Additional District and Sessions Court (FTC No.1) Salem, at 10.30 a.m. on 11.02.2019. In the meantime, the Deputy Registrar (Crl. Side) is directed to send all the records, if received, to the Additional District and Sessions Court (FTC No.1) Salem.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Deputy Registrar (Crl. Side),
Madras High Court,
Chennai - 104.
2. The Additional District and
Sessions Court (FTC No.1),
Salem.
3. The Public Prosecutor,
Madras High Court,
Chennai - 104.
4. The Judicial Magistrate III
Salem

+4 ccs to Mrs.P.V.Rajeswari Advocate sr 89631,89647,89645,89646
+1 cc to M/s.R.Nalliyappan Advocate sr 88297

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