

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.04.2018

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THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.R.C.Nos.1098 & 1099 of 2011
and M.P.Nos.1 and 1 of 2011

P.Thangavel .. Petitioner
[in both Crl.R.Cs.]/Defacto Complainant
versus
Venkatesan .. Respondent
[in both Crl.R.Cs.]/Accused

Common Prayer: Criminal Revision Petitions are filed under Section 397 of the Code of Criminal Procedure 1973, to set aside the order of Crl.M.P.Nos.150 of 2011 and 399 of 2010 dated 09.05.2011 and in Crl.A.No.52 of 2005 on the file of the Fast Track Court, Namakkal.

For Petitioner : Mr.M.Raja Sekhar
[in both Crl.R.Cs.]
For Respondent : Mr.V.Regunathan
[in both Crl.R.Cs.] for Mr.S.Dhanasekaran

C O M M O N O R D E R

Since the issue involved in these Revisions are one and the same, which were arising out of the common order dated 09.05.2011, they are taken up together for final disposal and this Court is decided to pronounce a common order in these Revisions.

2. The petitioner in both the Revision Petitions is the respondent in Crl.A.No.52 of 2005 on the file of the learned Additional District Judge, Namakkal. The said Criminal Appeal has been filed by the respondent as against the judgment passed in C.C.No.687 of 2002 by the learned Judicial Magistrate, Tiruchengode.

3. At the time of enquiry in Crl.A.No.52 of 2005, the respondent filed two petitions, namely, Crl.M.P.Nos.399 of 2010 and 150 of 2011 under the provisions of Section 391 [1] [2] of Crl.P.C., in which, he prayed to receive the additional documents and prayed to permit him for producing the additional evidence. After hearing both sides, the learned Additional District Judge, Namakkal, allowed both the petitions and

directed the Trial Court to record the additional evidence after receiving the documents enclosed with the petition.

4. Aggrieved by the order dated 09.05.2011, the respondent in both the Civil Miscellaneous Petitions filed these Revisions, in which, he seeking the relief to set aside the order passed by the learned Additional District Judge, Namakkal.

5. Now, in order to substantiate the claim made by the petitioner, the learned counsel for the revision petitioner submitted that in the Magistrate Court, the petitioner filed a private complaint against the respondent by saying that the present respondent committed the offence punishable under Section 138 of the Negotiable Instruments Act. After elaborate trial, the learned Magistrate convicted the respondent and then only, he approaches the learned Additional District Judge, Namakkal, for setting aside the judgment passed by the learned Magistrate. In the said circumstances, in order to drag on the Criminal Appeal, he filed those two Petitions without any reasons.

6. Further, he added that if really the documents enclosed with the petition is a genuine one, it should be marked only at the time of trial. Moreover, the documents now submitted along with the petition are all xerox copies, thereafter, those documents have not at all having evidential value. But the learned Additional District Judge, without analysing these aspects allowed the petitions filed by the respondent.

7. On the other hand, the learned counsel appearing for the respondent would submit that before lodging the complaint before the learned Magistrate, the revision petitioner issued a statutory notice under Section 138 of the Negotiable Instruments Act to the respondent. After receiving the said notice, the respondent sent a reply notice, in which, the entire defense now taken by the respondent have been elaborately mentioned. So, the respondent is not attempted to introduce the new facts in this case. Even though the documents enclosed along with the petition are xerox in nature. It would be open to the petitioner to raise objections at the time of marking the documents. In the said circumstances filing the revision petition is unnecessary. Accordingly, he prayed for dismissing the Revision Petitions.

8. Since the respondent has filed the petitions before the learned Additional District Judge, Namakkal, under the provisions of Section 391 [1] [2] of Crl.P.C. it would be necessary to see the definition of the said provisions. Section 391 [1] [2] of Crl.P.C. is defined as follows:

"391(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal."

9. So, according to the said provisions, the Appellate Court is having ample power for receiving the additional evidence subject to the condition that the Court should come to the conclusion that the additional evidence is necessary. With regard to the additional documents now submitted by the respondent, the learned Additional District Judge hold that the particulars of those documents are already mentioned in the reply notice sent by the respondent. Moreover, it was mentioned in the order, as the documents which are enclosed in the petitions are all relates to the year of 1997-1999. Further, it was identified by the learned Additional District Judge that the 11th document enclosed in the petition is a document certified by the competent court after seeing the original. Moreover, it was hold in one of the document executed on 17.06.1999, the serial number of the cheque is now under the dispute was mentioned and that the said cheque was in the custody of one V.Madeswaran.

10. Now, on going through the defense taken by the respondent in the Criminal Appeal is the alleged cheque pertaining to the Criminal Appeal is not handed over to the petitioner by the respondent directly. The said cheque goes to the hands of the petitioner only through one V.Madeswaran. The said defense was already mentioned in the reply notice sent to the revision petitioner.

11. Accordingly, the particulars available with the additional documents are related with the defense taken by the respondent whereby taking the view of the learned Additional District Judge that those documents are necessary for disposing the Criminal Appeal does not warrant any interference.

12. The next objection raised by the revision petitioner is that all the documents now produced are in the form of xerox copies. In this aspect, it is not necessary to decide that those documents are primary evidence or not if

really the petitioner having objection in these aspect, he should raise objections at the time of marking the documents. Despite of that, the learned counsel appearing for the petitioner raised objections for receiving the documents is not having any valid point.

13. Lastly, the learned counsel appearing for the petitioner made a submission that the respondent is trying to fill up the gap in his case by way of producing the additional documents, which is not permissible under law. For which, he relied upon the judgment of our Honourble High Court reported in 2006 [2] CTC 585 in the case of S.P.MUTHU vs KIRUPAKARAN, in which, this Court has held that Section 391 of CrI.P.C. cannot be used to fill up any gap in the prosecution case.

14. As already discussed that those documents were enclosed with the petitions filed by the respondent are relates to the subject matter, which was mentioned in the reply notice sent by the respondent. So, we cannot come to the conclusion that the respondent is trying to fill up the gap in the prosecution case. The said submission made by the petitioner is also not at all helpful in favour of him. In the said circumstances, the learned counsel does not indicate any manifest error found in the order passed by the learned Additional District Judge, Namakkal.

15. In the light of the above discussion stated supra, this Court came to the conclusion that the impugned order passed by the learned Additional District Judge, Nammakal in CrI.M.P.Nos.150 of 2011 and 399 of 2010 dated 09.05.2011, is only within the legal frame work.

16. In the result, these Criminal Revisions are dismissed.

सत्यमेव जयते

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sri

To

1.The Judicial Magistrate,
Tiruchangode.

2.The Chief Judicial Magistrate,
Namakkal.

3.The Additional District Judge,
Namakkal.

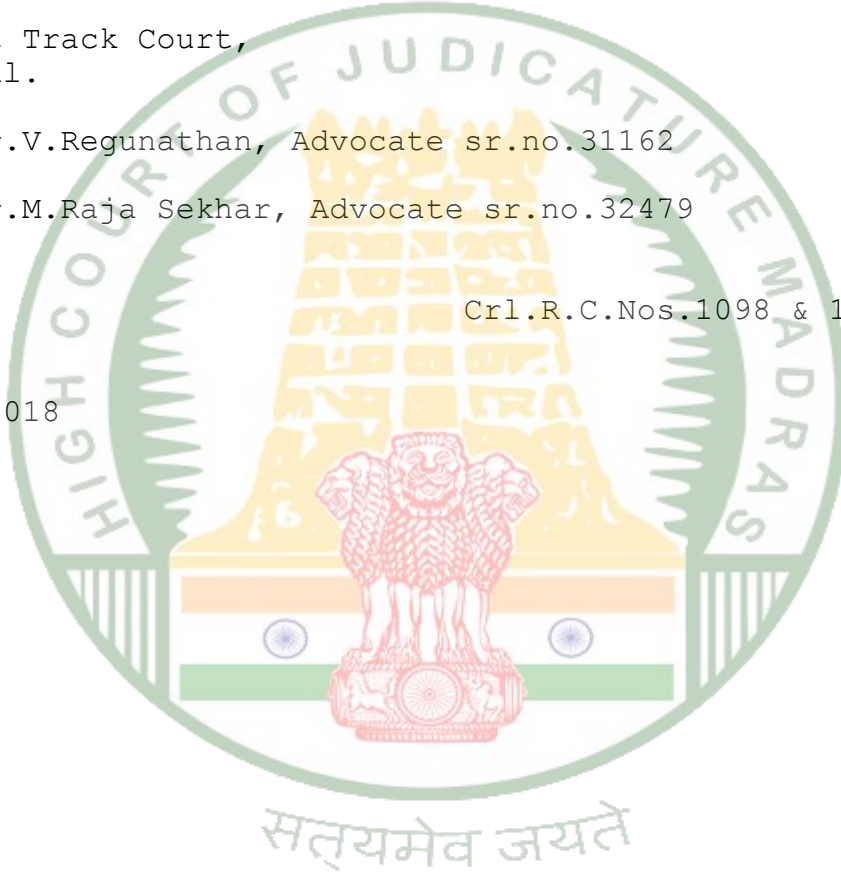
4.The Fast Track Court,
Namakkal.

+1cc to Mr.V.Regunathan, Advocate sr.no.31162

+1cc to Mr.M.Raja Sekhar, Advocate sr.no.32479

Crl.R.C.Nos.1098 & 1099 of 2011

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