

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 16.07.2018]

[Pronounced on : 26.09.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.Nos.656 and 657 of 2018
and
Crl.M.P.Nos.7565 and 7566 of 2018

D.Vengeeswaran ... Petitioner in Crl.R.C.No.656/2018/Accused

D.Manimegalai ... Petitioner in Crl.R.C.No.657/2018/Accused

.. Vs ..

R.Vasanthi ... Respondent in both Crl.R.Cs./Complainant

Prayer in both Crl.R.Cs.: Criminal Revision Cases filed under Sections 397 and 401 of Cr.P.C. to call for the records and set aside the order passed by the XVI Additional City Civil Court, Chennai, in Crl.M.P.Nos.393 and 394 of 2017 in Crl.A.Nos.23 and 24 of 2017 respectively dated 20.02.2018 and permit the petitioners for further cross-examination of the respondent/complainant.

In both Crl.R.Cs.

For Petitioners : Mr.K.R.Ramesh Kumar

For Respondent : Mr.K.Venkatakrishnan

COMMON ORDER

Both the Criminal Revision Cases are filed by the petitioners seeking to set aside the order passed by the learned XVI Additional Judge, City Civil Court, Chennai, in Crl.M.P.Nos.393 and 394 of 2017 in Crl.A.Nos.23 and 24 of 2017 respectively dated 20.02.2018 and permit the petitioners to further cross-examine the respondent/complainant.

2. The case of the complainant/respondent herein is that the accused/petitioners in both the criminal revision cases have borrowed a sum of Rs.13,50,000/- and Rs.1,00,000/- respectively in the year 2010 for improving their unregistered Chit Fund business and for urgent family expenditures. At the time of borrowing, the petitioners have promised to repay the entire amount of Rs.13,50,000/- and Rs.1,00,000/- respectively within few months. But the petitioners have failed to keep that promise. When the complainant/respondent herein had

demanded for repayment of the said loan amount, the petitioner in Crl.R.C.No.656 of 2018 has given four post dated cheques for a total sum of 13,50,000/- viz., (i) Cheque bearing No.686014, dated 29.11.2012 for Rs.11,00,000/- drawn on City Bank, N.A.Branch, Chennai, (ii) Cheque bearing No.746079, dated 29.11.2012 for Rs.1,00,000/- drawn on City Bank, N.A.Branch, Chennai, (iii) Cheque bearing No.746080, dated 29.11.2012 for Rs.50,000/- drawn on City Bank, N.A.Branch, Chennai, and (iv) Cheque bearing No.746084, dated 29.11.2012 for Rs.1,00,000/- drawn on City Bank, N.A.Branch, Chennai, and the petitioner in Crl.R.C.No.657 of 2018 has given a Cheque bearing No.628438, dated 30.11.2012 for a sum of Rs.1,00,000/- drawn on Canara Bank, Chinmaya Nagar Branch, Chennai. The said cheques were presented for collection by the complainant but the same were returned as "insufficient funds". Hence, the complainant/respondent herein had issued Legal notices dated 07.12.2012. The accused have received the said notices on 08.12.2012, but failed to make payment. Hence, the respondent herein/complainant had filed two complaints before the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, against the petitioners herein for the offences under Sections 138 and 142 of the Negotiable Instruments Act, 1881, as amended by Act 55 of 2002 in the year 2013, which were numbered as C.C.No.782 and 783 of 2013 and thereafter, the cases were transferred to the Court of Metropolitan Magistrate, Fast Track Court No.III, Saidapet, Chennai.

3. The learned Metropolitan Magistrate, Fast Track Court No.III, Saidapet, Chennai, after conclusion of the trial, convicted the revision petitioners herein/accused for the offence under Section 138 of the Negotiable Instruments Act and sentenced them to undergo simple imprisonment for a period of six months and also directed them to pay the cheque amounts viz., Rs.13,50,000/- and Rs.1,00,000/- respectively as compensation to the complainant. Aggrieved by the said judgment passed by the trial Court, the accused have preferred appeals in Crl.A.Nos.23 and 24 of 2017 respectively before the learned Principal Sessions Judge, Chennai, and the same are pending before the XVI Additional City Civil Court, Chennai.

4. To elicit certain important points which are all very essential to arrive at a just decision of the cases, petitions in Crl.M.P.Nos.393 and 394 of 2017 under Section 391 of Cr.P.C. have been filed by the accused before the learned XVI Additional Judge, City Civil Court, Chennai, seeking permission to further cross-examine the complainant. The said petitions were dismissed by the learned XVI Additional Judge, Chennai, on 20.02.2018. Aggrieved by the same, the accused have preferred the above two Criminal Revision Cases before this Court.

5. Learned counsel appearing for the revision petitioners in both the cases/accused would contend that in order to elicit certain answers so as to rebut the presumption in

favour of the accused, they have filed petitions for further cross-examination of the complainant, but an opportunity to cross-examine the complainant/P.W.1 was denied by the Lower Appellate Court and hence, prayed for allowing of the criminal revision cases.

6. Pet contra, the learned counsel appearing for the respondent in both the criminal revision cases/complainant would contend that originally, before the trial Court, P.W.1 was in the witness box and chief-examination was conducted on 08.10.2013 and there was no cross-examination. Thereafter, on an application, the complainant was recalled and cross-examination was conducted on 04.08.2014, after a period of nearly one year. Thereafter, again, on an application, P.W.1 was recalled for further cross-examination on 04.04.2016 and also filed typed set of papers of chief-examination recorded on 08.10.2013. On application of recall, cross-examination was conducted on 04.08.2014 and on further application of recall, further cross-examination was conducted and recorded on 04.04.2016. Learned counsel appearing for the respondent/complainant would further contend that the accused have simply mentioned that some vital points have to be elicited but no valid reason has been mentioned and therefore, the petitions were not supported by an affidavit. In the said circumstances, the learned counsel appearing for the respondent contended that it is only to drag on the proceedings and hence, prayed for dismissal of the criminal revision cases.

7. On a perusal of the order passed by the learned XVI Additional Judge, Chennai, it is seen that the learned Judge, while dealing with the petitions in CrI.M.P.Nos.393 and 394 of 2017 filed under Section 391 of Cr.P.C. for receiving additional evidence, has given a categorical finding that more and sufficient particulars have already been given by the accused to cross-examine P.W.1 on 08.10.2013. However, again on 04.08.2014, the complainant was cross-examined at length and then, the complainant was recalled and further cross-examination was conducted on 04.04.2016.

8. It appears that P.W.1 was examined in the year 2013 and cross-examination at the first instance was conducted in the year 2014 and second instance was conducted in the year 2016 and concluded that several opportunities were given to the accused to cross-examine the complainant. In the absence of any new averments or pleadings, the applications were rejected. It also appears from the typed set of papers that the complainant was cross-examined at length and almost all the points have been put to her in the cross-examination and in the process of cross-examination, it appears that the matters were pending before the trial Court from October 2013 to April 2016. Therefore, I do not find any irregularity or illegality in the orders passed by the learned XVI Additional Judge, XVI Additional City Civil Court, Chennai, in

CrI.M.P.Nos.393 and 394 of 2017 in CrI.A.Nos.23 and 24 of 2017 respectively dated 20.02.2018 and hence, the same do not call for any interference by this Court.

9. In this view of the matter, both the Criminal Revision Cases are liable to be dismissed and accordingly, the same are dismissed. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/--

Assistant Registrar(CS IX)

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Sub Assistant Registrar

JrI

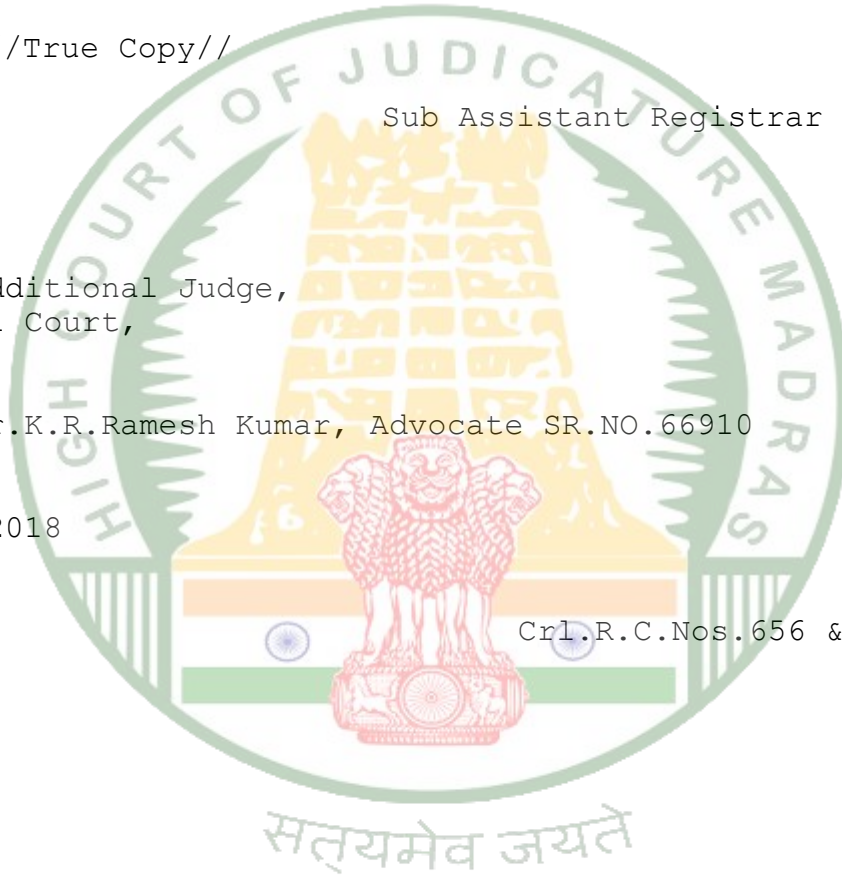
To
The XVI Additional Judge,
City Civil Court,
Chennai.

+1cc to Mr.K.R.Ramesh Kumar, Advocate SR.NO.66910

KAN(CO)
sm:10.10.2018

Orders
in

CrI.R.C.Nos.656 & 657/2018



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