

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

Crl.A.No.331 of 2013

M/s.Goutamchand Praveenchand
rep. by its Proprietor,
Mr.Goutamchand Naghar,
No.18, General Muthiah Street,
Sowcarpet,
Chennai-600 079.

... Appellant/Complainant

Vs.

1.M/s.Shilpa Traders
2.Heeralal Chandalia
3.Veena Chandalia

... Respondents /Accused

Prayer: Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure to set aside the order of the learned VIII Metropolitan Magistrate, George Town, Chennai, in C.C.No.699 of 2003 dated 03.05.2011.

For Appellant : Ms.S.Annakkodi
For Respondents: Mr.N.D.Bahety

JUDGMENT

This appeal has been preferred against the order passed by the learned VIII Metropolitan Magistrate, George Town, Chennai, dated 03.05.2011 made in C.C.No.699 of 2003.

2.The appellant before this Court is the complainant, who filed a private complaint before the learned Magistrate against the respondents/accused to punish them for the alleged offence under Section 138 of the Negotiable Instruments Act.

3.During the pendency of C.C.No.699 of 2003 before the trial Court, it seems that on 10.10.2005, in Crl.M.P.No.841 of 2005 in C.C.No.699 of 2003, the learned Magistrate allowed the petition filed by the complainant under Section 311 of CrPC for the purpose of examining the complainant himself.

4.Assailing the said order dated 10.10.2005, the accused/respondents had preferred a revision before this Court in Crl.R.C.No.20 of 2006. This Court, while disposing the said

revision by order dated 22.07.2010, has passed the following orders:

"5.At the outset, it is to be stated that there is a serious inconsistency even in respect of the name of the complainant. A perusal of the complaint reveals that in the cause title, it is mentioned as Mr.Gowthamchand Praveenchand represented by his power of Attorney Mr.Raja Rajan. A perusal of the contents also would make it very clear that the complaint was preferred by an individual and not by any company. However, strangely a petition was preferred under Section 311 of CrPC. by the complainant under the name of Gowtham Chand Nahar. It is contended by the learned counsel for the respondent that the said Gowtham Chand Nahar is only representing the complainant Company. But the name of the complainant, as already pointed out, as mentioned in the complaint itself makes it very clear that it is only an individual. The said Gowthamchand Praveenchand has preferred the complaint and by no stretch of imagination, it could be construed that the complaint was preferred by the Company and Gowtham Chand Nahar has represented the said Company by preferring the complaint for the offence under Section 138 of the Negotiable Instruments Act.

6.It is pertinent to note that the said factor of contradictory version in respect of the name of the complaint to the effect that whether the name of the complainant is Gowthamchand Praveenchand or Gautham Chand Nahar was raised even in the objection filed by the petitioner/accused. But the name was brushed aside by the learned Magistrate. A reading of the impugned order reveals that the learned Magistrate has though it fit to pass a cryptic order without assigning any valid reasons ignoring and overlooking the glaring inconsistency found in respect of the name of the complainant. Therefore, this Court is constrained to set aside the impugned order dated 10.10.2005 made in CrI.M.P.No.841 of 2005 in C.C.NO.699 of 2003 on the learned VIII Metropolitan Magistrate, George Town, Chennai.

7.The learned Magistrate is directed to consider the matter and shall also given opportunity to both sides regarding the name of the complainant and thereafter, to proceed with the matter. Considering that the case itself is related to the year 2003, this Court is constrained to direct the learned Magistrate to expedite the trial as expeditiously as possible and to complete the same

more particularly within a period of three months from the date of receipt of a copy of the order of this Court.

8. In view of the submission made by the learned counsel for the petitioner, the personal appearance of A3, who is an aged lady, is hereby dispensed with on condition that she should appear before the learned Magistrate as and when required."

5. Consequent to the direction issued by this Court in the aforesaid Criminal Revision Case, the learned Magistrate, by its order dated 15.11.2010, has given his findings, as to who was the complainant in the said C.C. In the penultimate para, the learned Magistrate has passed the following orders:

"8) Considering the above facts, evidence and document, this Court come to the conclusion that the complainant is Mr. Gautamchand Praveenchand, who is an individual represented by power agent Mr. Raja Rajan. The complainant is not a company or firm represented by Gautamchand Nahar and the case can proceed by the complainant Mr. Gautamchand Praveenchand or through his power agent."

6. In spite of the issue as to who was the complainant, having been resolved by the learned Magistrate by the said order, as directed by this Court in the revisional order referred to above, still, the complainant has maintained that the complainant was only a Company, and not an individual and therefore, the said Company can be represented by Mr. Goutamchand Naghar. It seems that the complainant has also maintained the case before the trial Court that the Complainant M/s. Goutamchand Praveenchand and Mr. Goutamchand Naghar are one and the same. It is the further case of the complainant before the trial Court still that both are same and it is only a mistake, that has been mentioned like that and therefore, it can be cured.

7. With regard to the said stand taken by the complainant side, the learned Magistrate by order dated 08.02.2011 has passed an order stating that inspite of the order dated 15.11.2010 passed by the learned Magistrate, whereby the issue as to who was the complainant since has to be resolved the complainant cannot maintain a different stand, if at all, if the complainant has any grievance, he can prefer revision before the appropriate Forum.

8. Only in that circumstances, the said C.C. had been posted for hearing several times. However, the complainant did not appear before the trial Court. Therefore, the learned Magistrate through the impugned order dated 03.05.2011 has passed the following orders:

"Complainant absent. Petition filed for dismissal. The Court has directed the complainant

to appear in person. Complainant preferred revision before High Court. In spite of several notices, the complainant has not appeared in person or file a revision petition before Hon'ble High Court. The Hon'ble High Court has already given direction to dispose of the case within 3 months. Already time granted by High Court has expired. But, no progress is made so far, since because of complainant absence. His presence is necessary for further proceedings. But, he did not appear before the Court. The Court has given sufficient opportunities. But, the act of the complainant is presumed that he wantonly drag on the case. This kind of act of the complainant cannot be encouraged by allowing the petition u/s. 256 CrPC filed by him continuously without any reason. Hence, the Court come to the conclusion to dismiss this complaint. Hence, complaint is dismissed for default under Section 256 CrPC and the accused is acquitted."

9. Aggrieved over the said order, the present appeal has been filed before this Court.

10. Heard Ms.S.Annakkodi, learned counsel appearing for the appellant and Mr.N.D.Bahety, learned counsel appearing for the respondents.

11. As has been pointed out earlier, there was an issue as to who was the complainant in this case. The same was resolved by the learned Magistrate, as directed by this Court, in the order made in Criminal Revision case, filed by the respondents/accused, as referred to above.

12. In spite of the said findings given by the learned Magistrate by order dated 15.11.2010, still the complainant had maintained before the trial Court that both the parties are same. It seems that when the issue was pointed out by the learned Magistrate, the complainant seems to have taken a stand as against the said order, revision would be filed to resolve the issue. Therefore, some reasonable time seems to have been given to prefer revision against the order dated 15.11.2010. However, admittedly, no revision has been filed and therefore, the findings given by the learned Magistrate by his order dated 15.11.2010 has become final.

13. When that being the position, the complainant has not chosen to appear before the trial Court. In this regard, the learned counsel appearing for the complainant/appellant has produced a Doctor Certificate dated 21.04.2011 issued by one Dr.Bharat Mehta. According to the said Certificate, the Gouthamchand Nahar was suffering from heart disease and therefore, he was advised bed rest from 21st April 2011 to 21st June 2011. Except these four lines in the Certificate, no other

documents seems to have been produced by the complainant before the trial Court or before this Court.

14.If a person is affected by heart disease, certainly, several medical treatment would have been applied on him and therefore, in that regard, those documents can very well be produced before the trial Court by the complaint so as to take some reasonable time to take up the matter.

15.Moreover, since the very issue of name of the complainant is controverted and even though the same has been resolved by the learned Magistrate by his order dated 15.10.2010 and the same has become final in the revision preferred by the complainant, the complainant's attitude through out has shown that he has not shown much interest in pursuing the case before the trial Court.

16.Moreover, at the time of earlier order passed in CrI.RC.No.20 of 2006 dated 22.07.2010, this Court has given a time bound direction to the Magistrate Court to complete the trial of C.C., since it was of the year 2003. Inspite of the said time bound direction was there and when the learned Magistrate was ready and willing to take up the case, in order to complete the same within the time stipulated by this Court, the complainant has not shown much interest and that is the reason why the learned Magistrate has recorded everything, including the continuous absence of the complainant and ultimately, dismissed the complaint by invoking Section 256 of CrPC and acquitted the accused through the impugned order.

17.Having heard the parties in full and perused all the documents referred to above, this Court is of the considered view that the complainant has not shown any interest in pursuing the complaint before the Magistrate Court, in spite of time bound direction given by this Court in earlier occasion. Therefore, the procedure under Section 256 of the Code has been rightly followed by the Court below.

In view of these circumstances, this Court finds no infirmity or illegality in the said impugned order. Therefore, the Criminal Appeal fails. Accordingly, the same is dismissed.

Sd/-

Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

mps

To

1.The VIII Metropolitan Magistrate,
George Town,
Chennai.

+2cc to Mr.N.D.Bahety, Advocate SR.No.10153

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SKS (CO)
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