

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.08.2018

PRONOUNCED ON : 22.11.2018

CORAM

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.570 of 2017

and

CrI.M.P.No.5073 of 2017

A.Subramanian ... Petitioner/Petitioner/Appellant

-vs-

1.Kannammal ... Respondent / Respondent/
Complainant

2.The Pubic Prosecutor,
Erode. ... Respondent/Formal Party

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 Cr.P.C., praying to set aside the order dated 17.02.2017 made in Cr.M.P.No.16 of 2017 in Criminal Appeal No.97 of 2016 on the file of the learned I-Additional District and Sessions Judge, Erode and to allow this petition.

For Petitioner : Mr.R.Krishnakumar

For Respondents : Mr.C.S.Saravanan
for R1

Mr.R.Suryaprakash,
Government Advocate (Criminal side)
for R2.

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ORDER

This Criminal Revision Case is filed against the order dated 17.02.2017 made in Cr.M.P.No.16 of 2017 in Criminal Appeal No.97 of 2016 on the file of the learned I-Additional District and Sessions Judge, Erode.

2. The respondent in the private complaint filed for the alleged offence under Section 138 of the Negotiable Instruments

Act, 1881, is the revision petitioner herein. The first respondent herein is the private complainant, who moved the learned Judicial Magistrate, Erode against the revision petitioner for the alleged offence under Section 138 of the Negotiable Instruments Act, 1881, for dishonour of Cheque and after trial, he was convicted. Hence, the revision petitioner herein filed C.A.No.97 of 2015 before the learned I-Additional District and Sessions Judge, Erode. Pending criminal appeal before the learned I-Additional District and Sessions Judge, Erode, the revision petitioner preferred C.M.P.Nos.15 of 2017 and 16 of 2017 to recall DW.1 and to mark certain additional documents. Accordingly, he filed the above two petitions under Section 311 Cr.P.C and 391 Cr.P.C., respectively, which were dismissed later. Hence, this revision.

3. The learned counsel for the revision petitioner contended that he is the appellant/accused before the learned I-Additional District and Sessions Judge, Erode and in order to prove that there was no pre-existing legally enforceable debt and hence he preferred the above two CMPs under Sections 311 and 391 Cr.P.C., and since the matter is at the appeal stage before the District Court and without giving a proper opportunity to probablize his case to rebut a statutory presumption, the case has been dismissed. Hence he prays for allowing the petition.

4. Heard the learned counsel appearing for the revision petitioner, the learned counsel appearing for the first respondent, the learned Government Advocate (Criminal side) appearing for the State and perused the materials available on record.

5. The learned counsel for the first respondent herein submitted that it is yet another method to drag on the appeal and hence prayed for dismissal.

6. After hearing both sides and after perusing the records, it is seen that the first respondent/complainant filed the case under Section 138 of N.I. Act stating that on 22.12.2012, the revision petitioner/accused borrowed a sum of Rs.5,00,000/- from the complainant for his urgent business expenses by promising to repay the said amount with interest at the rate of 18% per annum. On the very same day, i.e., on 22.12.2012, to discharge the said liability of Rs.5,00,000/- and to acknowledge the same as Proprietor, Raja Tex, the accused had issued a post-dated cheque for Rs.5,00,000/- in favour of the complainant bearing Cheque No.676692, dated 22.01.2013 drawn on the Bank of India, Karur Branch with a condition to honour the same on the said date. Subsequently, the complainant presented the cheque for collection on 15.02.2013

through Karur Vysya Bank, Mettukadi Branch but the cheque was returned on 15.02.2013 with an endorsement as "Account closed" and thereafter, the complainant issued an Advocate notice dated 22.02.2013 demanding payment of the said amount with interest thereon due under the cheque within 15 days from the date of receipt of the notice and the accused received the notice on 28.02.2013 and had not given any reply or not repaid the amount. Therefore, the complainant filed the case. The trial Court framed charges against the accused under Section 138 of N.I. Act. The complainant Kannammal was examined as P.W.1 and Ex.P1 to Ex.P.4 were marked on the side of the complainant. The accused one Sudhakar was examined as D.W.1 and one Ravikumar was examined as D.W.2. The learned learned Judicial Magistrate convicted the appellant/accused under Section 138 of N.I. Act and sentenced the accused to undergo simple imprisonment for a period of one year and imposed a fine of Rs.5000/-, in default, to undergo simple imprisonment for a period of one month. Against the judgment of the learned Judicial Magistrate, Fast Track Court No.II, Erode passed in STC.No.331 of 2013 dated 21.07.2015 the appellant/accused preferred a criminal appeal. In the appeal the lower Appellate Court heard the arguments of both sides and posted for judgment on 28.09.2016. When the case was posted for judgment on 28.09.2018 the appellant/accused filed two petitions, i.e., C.M.P.Nos.180 of 2018 and 181 of 2018 to re-open the case and to permit the appellant/accused to adduce additional evidence on the side of the appellant/accused, which were dismissed.

7. Taking into consideration the earlier applications in C.M.P.Nos.180 of 2016 and 181 of 2016 filed by the revision petitioner were dismissed and also the High Court has also dismissed the case, it appears that the accused has filed the said two CMPs only when the criminal appeal was posted for judgment. After the above said dismissal, it appears again he has filed this revision petition. In the present instant, to support his contention, he has produced invoice No.149, dated 20.03.2008 and invoice No.150, dated 27.03.2008. Though these documents are being contemporary documents to the duration of the cheque, in the interest of justice, I am inclined to allow the criminal revision on payment of Rs.5000/- to the first respondent herein within the specified time period. It is also observed that this Court is not expressing any view or opinion as to the veracity of those two documents (invoices), which are now sought to be introduced by the revision petitioner/appellant. The probative value, admissibility and relevancy of those documents has to be instantly gone into by the lower Appellate Court/ I-Additional District and Sessions Judge, Erode in accordance with law.

8. In the result, this Criminal Revision Case is allowed on condition that the revision petitioner shall pay a cost of Rs.5,000/- to the first respondent herein within a period of

three weeks from the date of receipt of a copy of this order, failing which this order shall stand dismissed automatically. The order dated 17.02.2017 made in C.M.P.Nos.15 of 2017 and 16 of 2017 in C.A.No.97 of 2015, pending before the I-Additional District and Sessions Judge, Erode stand set aside and allowed and the learned I-Additional District and Sessions Judge, Erode shall consider the probative value of those documents to mark as additional evidence by recalling DW.1 and record the evidence. The recall of DW.1 and recording all these evidence has to be completed within a period of six weeks after the payment of cost. It is further directed to dispose of the criminal appeal within a period of six weeks thereafter. Both the parties are directed to cooperate for disposal of the case from the time frame as fixed above. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

PJL/JRL

To

1. The I-Additional District and Sessions Judge,
Erode.

+1cc to Mr.C.S.Saravanan, Advocate, S.R.No. 80062

CRL.R.C.No.570 of 2017

KS (CO)
GN(20/12/2018)

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