



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.04.2018
DELIVERED ON : 13.04.2018

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THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.476 of 2016

Maria Suseela

.. Petitioner

Vs.

P.Lawrance Inbaraj

.. Respondent

Prayer : This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., to call for the records and set aside the order dated 07.01.2016 made in Cr.M.P.No.2087 of 2015 in Cr.R.C.SR.No.9650 of 2015 on the file of the Sessions Judge, Tiruchirappalli Division, Tiruchirappalli, against the ex-parte order dated 16.07.2012 made in S.T.C.No.1315 of 2009 on the file of the learned Judicial Magistrate No.4, Trichy.

For Petitioner : Mr.K.Appadurai
For Respondent : Mr.P.Ganapathi Subramanian

JUDGMENT

Heard Mr.K.Appadurai, learned counsel appearing for the petitioner and Mr.P.Ganapathi Subramanian, learned counsel appearing for the respondent.

2.The criminal revision case has been filed to set aside the order dated 07.01.2016 made in Cr.M.P.No.2087 of 2015 in Cr.R.C.SR.No.9650 of 2015 on the file of the Sessions Judge, Tiruchirappalli Division, Tiruchirappalli, against the ex-parte order dated 16.07.2012 made in S.T.C.No.1315 of 2009 on the file of the learned Judicial Magistrate No.4, Trichy.

3.The respondent borrowed a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) from the petitioner on 05.08.2008 by executing a promissory note promising to repay the said amount within a period of three months on demand together with interest at a rate of Rs.1.50 per Rs.100/- per month to meet out the expenses in his educational institution. It is stated that the respondent has failed to repay the said sum with interest. When the petitioner



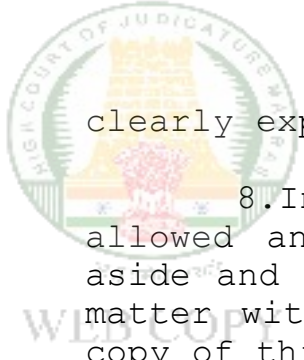
approached him for money, the respondent gave a cheque dated 05.03.2009 drawn from the State Bank of India, Eathagiri Branch for a sum of Rs.22,10,000/- (Rupees Twenty Two Lakhs and Ten Thousand only) towards principle and interest.

4. It is further alleged that when the petitioner presented the said cheque for encashment through Central Bank of India, Trichy Branch, the same was returned with an endorsement "insufficient funds". The petitioner sent a statutory notice and afterwards, the petitioner filed a case in S.T.C.No.1315 of 2009, against the respondent herein, the petitioner appointed one Govindaraj, S/o, one Nagarajan as her power agent and filed a case before the learned Judicial Magistrate No.4, Trichy. After cross examination of P.W.1 was completed, the respondent failed to appear and Non bail able warrant was issued by the trial Court and in the mean time, health of the respondent was deteriorated and she was not conscious for more than one year. From the year 2008, the respondent undergone treatment upto 2014 and afterwards, she came to know her complaint was dismissed for non representation on 16.07.2012. Thereafter, she filed Cr.M.P.No.2087 of 2015 before the learned District and Sessions Judge, Trichy to condone the delay of 1019 days. The learned District and Sessions Judge by an order dated 07.01.2016 dismissed the delay excuse petition.

5. On the side of the petitioner, it is stated that the petitioner suffered from heart attack and was taking continuous treatment from 2008 to 2014. The fault is on the part of the power agent and it was beyond her control and immediately after her recovery from illness, she filed the revision petition. The lower Court has failed to see that the respondent is trying to cheat and defraud the petitioner to the tune of Rs.20,00,000/- taking advantage of the fact that the petitioner is an aged woman and the lower Court has failed to consider that already evidence of P.W.1 was over and the respondent was continuously absent.

6. On the side of the respondent, it is stated that each day delay is not explained and no medical records are filed and the lower Court has come to the correct conclusion that delay is not properly explained.

7. On the side of the petitioner, it is stated that the petitioner is having some heart problem and she is undergoing treatment from the year 2010 to 2014 continuously. The documents to show that the petitioner undergoing treatment in the hospitals from 13.06.2011 till 22.03.2016 is filed. Records to show that the petitioner was admitted in the Appollo Hospital from 02.09.2011 to 04.09.2011 is also filed. These documents reveals that the petitioner was undergoing treatment for some cardiac problem. The documents to show that the petitioner is Rs.20,00,000/-. Hence, an opportunity is to be given to the petitioner to put forth her case. Since the petitioner was undergoing treatment continuously, the delay is



clearly explained by the petitioner.

8. In these circumstances, this criminal revision case is allowed and the order passed by the lower Court is hereby set aside and the lower appellate Court is directed to dispose of the matter within a period of one month from the date of receipt of copy of this order. No Costs.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Tiruchirappalli Division,
Tiruchirappalli.

2. The Judicial Magistrate No.IV,
Trichy.

+ 1 CC TO Mr.K.APPADURAI, ADVOCATE IN SR No. 61231

MRN

TE/RSK/SAR-4 : 11/05/2018 : 3P/4C

Cr1.RC(MD)No.476 of 2016
13.04.2018