



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.02.2018

Delivered on : 15.03.2018

WEB COPY

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THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.12771 of 2013

C.Chandran	...	Petitioner/Respondent/ Complainant
	Vs.	
Dr.Sree Devi	...	Respondent/Petitioner/ Accused

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the order dated 27.05.2013, passed in Crl.M.P.No.1449 of 2013 in C.C.No.187 of 2012, on the file of the Judicial Magistrate Court No.I, Fast Track Court No.I (Magistrate Level), Nagercoil, and set aside the same by allowing the Criminal Original Petition.

For Petitioner : Mr.P.T.Ramesh Raja
for Mr.M.Saravanan

For Respondent : No Appearance

ORDER

The petitioner herein is the complainant in C.C.No.187 of 2012 on the file of the Judicial Magistrate No.I, Fast Track Court, Nagercoil. He filed this Criminal Original Petition, seeking to set aside the order dated 27.05.2013, passed in Cr.M.P.No.1449 of 2013 in C.C.No.187 of 2012.

2.The case of the petitioner is that the respondent being the accused obtained a sum of Rs.6,00,000/- by way of loan to tideover her domestic need and thereafter, in order to discharge her liability, she had given a Cheque bearing No.002044, drawn on Trivanathapuram District Co-operative Bank Ltd., Kunnukuzhy Branch, Trivandrum, dated 04.03.2011, for a sum of Rs.6,00,000/-. The petitioner presented the abovesaid cheque on 09.03.2011 through HDFC Bank, Nagercoil Branch. But, the said cheque was returned with an endorsement ''funds insufficient''. In order to dishonouring the cheque, the Bank concerned issued a return memo, dated 12.03.2011. After receiving the same, on 07.04.2011, the petitioner sent a registered notice through his Lawyer to the respondent/accused, calling upon her for payment of the said amount due on the dishonoured cheque, within 15 days from the date



of receipt of notice. The said notice was received by the respondent on 12.04.2011. Thereafter, she had not paid the said amount within the time as stipulated in the notice. Hence, the petitioner has filed a private complaint before the Judicial Magistrate Court No.I, Nagercoil. During the time of trial, when the case was posted for the respondent's side evidence, she filed an application under Section 311 Cr.P.C., seeking the relief to re-call the evidence of the petitioner for further cross-examination on the side of the respondent. After giving opportunity to the petitioner, the said application was allowed on considering the judgment reported 2008 (1) DCR 261.

3.Now, the learned counsel appearing for the petitioner made a submission that only in order to prolong the trial proceedings, the respondent filed the above application under Section 311 Cr.P.C. Further, he added that as the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, is to be tried summarily, the learned Magistrate ought not to have entertained the above application. In the present case, the respondent herein filed the above application, when the case was posted for defence side evidence. Therefore, the order passed by the learned Magistrate is liable to be set aside.

4.It is true that the petition filed under Section 138 of the Negotiable Instruments Act, 1881, has to be disposed of by way of summary proceedings. This Court agrees with the contention raised by the petitioner that the legislative intent is speedy disposal of the cases of this nature.

5.However, according to Section 138 of the Negotiable Instruments Act, 1881, it is the duty of the respondent to prove that the alleged cheque had not been issued for any debt or liability. Further, the accused has to prove in trial by leading cogent evidence and that there was no debt or liability. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court in **K.N.Beena Vs. Muniyappan and another** reported in **2001 Cri.L.J. 4745**, wherein it has been held as follows:-

'6.In our view the impugned judgment cannot be sustained at all. The Judgment erroneously proceeds on the basis that the burdern of proving consideration for a dishonoured cheque is on the complainant. It appears that the learned Judge had lost sight of Sections 118 and 139 of the Negotiable Instruments Act. Under Section 118, unless the contrary was proved, it is to be presumed that the Negotiable Instrument (including a cheque) had been made or drawn for consideration. Under Section 139 the Court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for



discharge, in whole or in part of a debt or liability. Thus in complaints under Section 138, the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused. This Court in the case of Hiten P.Dalal V. Bratindranath Banerjee reported in 2001 (6) SCC 16 has also taken an identical view.'

6.So, accordingly, the respondent being the accused, in order to prove her case, filed an application for further cross-examination of the petitioner/complainant. In the above situation, this Court cannot come to the conclusion that the application was filed only with a view to drag on the proceedings. Hence, the reasons stated by the petitioner for setting aside the order passed by the learned Judicial Magistrate No.I, Fast Track Court, Nagercoil, are not sufficient. Hence, the order dated 27.05.2013, passed in Crl.M.P.No.1449 of 2013 in C.C.No.187 of 2012, by the learned Judicial Magistrate No.I, Fast Track Court No.I (Magistrate Level), Nagercoil, is confirmed and the Criminal Original Petition is dismissed. However, since the case has been filed in the year 2012, it is necessary for giving some appropriate direction to the Court concerned for its early disposal. Hence, the learned Judicial Magistrate No.I, Fast Track Court No.I (Magistrate Level), Nagercoil, is directed to dispose of C.C.No.187 of 2012, pending on his file, on merits and in accordance with law, within a period of two months from the date of receipt of a copy of this order, after giving an opportunity to the respondent for cross-examining the petitioner/complainant.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.I,
Fast Track Court No.I [Magistrate Level],
Nagercoil.

+1 cc to Mr.M.Saravanan, Advocate in SR No.55401

order in
Crl.O.P. (MD) No.12771 of 2013
15.03.2018
(2/2)