

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.R.C.No.1306 of 2012

G.Narasimhulu Naidu

.. Petitioner/Complainant

Vs.

M.Saraswathi

.. Respondent/Accused

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the order dated 15.09.2012 passed in C.M.P.No.5306 of 2012 in S.T.C.No.309 of 2012 on the file of the Chief Judicial Magistrate Court, Erode [sic Judicial Magistrate Court (Fast Track Court No.II-Magisterial Level), Erode].

For Petitioner : Mr.C.S.Saravanan

For Respondent : Mr.M.Karthik
for Mr.I.C.Vasudevan

O R D E R

This criminal revision has been filed seeking to set aside the order dated 15.09.2012 passed in C.M.P.No.5306 of 2012 in S.T.C.No.309 of 2012 on the file of the Chief Judicial Magistrate Court, Erode [sic Judicial Magistrate Court (Fast Track Court No.II-Magisterial Level), Erode].

2. For the sake of convenience, the parties will be referred to by their name.

3. It is the case of Narasimhulu Naidu (for short "Naidu") that Subramaniam and his wife Saraswathi had borrowed a sum of Rs.10,00,000/- from him on 10.09.2007, towards which,

Subramaniam issued five cheques, each for a sum of Rs.2,00,000/-, all drawn on the joint account of Subramaniam and Saraswathi with HDFC Bank, Erode; Subramaniam died on 17.10.2007; at the request of Saraswathi, Naidu deposited the cheques on 29.10.2007 and 02.01.2008, but, they were dishonoured and returned with the endorsement "Insufficient Funds"; after issuing a statutory demand notice, Naidu initiated a prosecution under Section 138 of the Negotiable Instruments Act (for brevity "the NI Act") before the Judicial Magistrate No.II, Erode, against Saraswathi.

4. Challenging the same, Saraswathi filed Crl.O.P.No.17555 of 2008 under Section 482 Cr.P.C. in the High Court, which was dismissed on 27.08.2009.

5. Before the trial Court, Naidu was examined-in-chief as PW1 on 23.02.2010, but, he was not cross-examined. Naidu closed his evidence on 25.03.2010.

6. Saraswathi was questioned under Section 313 (1) (b) Cr.P.C. on 29.03.2010 and the case was posted for defence evidence on 30.04.2010. At that time, Saraswathi filed an application under Section 311 Cr.P.C., which was allowed on 16.06.2010.

7. Thereafter, the case was transferred from the file of the Judicial Magistrate Court No.II, Erode, to the file of the Chief Judicial Magistrate Court, Erode.

8. Before the Chief Judicial Magistrate Court, Erode, Naidu was cross-examined on 18.11.2011. Thereafter, Naidu filed C.M.P.No.2940 of 2011 to examine the Branch Manager, HDFC Bank and for a direction to the Branch Manager to bring the account opening details and account statements.

9. At that stage, the Fast Track Courts at Magisterial level were created and therefore, this case was transferred from the file of the Chief Judicial Magistrate Court, Erode, to the file of the Judicial Magistrate Court (Fast Track Court No.II - Magisterial Level), Erode. On transfer, the main case was re-numbered as S.T.C.No.309 of 2012 and C.M.P.No.2940 of 2011 was re-numbered as C.M.P.No.5306 of 2012.

10. After hearing either side, the trial Court dismissed C.M.P.No.5306 of 2012 on 15.09.2012, by holding that Saraswathi has not denied that the cheque was issued from the joint account

she had with her (late) husband Subramaniam in HDFC Bank.

11. Instead of challenging the detailed order dated 15.09.2012 passed in C.M.P.No.5306 of 2012 by the Judicial Magistrate Court (Fast Track Court No.II - Magisterial Level), Erode, Naidu has challenged the one line docket order, which reads as follows:

"Order Pronounced

In the result, this petition is dismissed."

12. One of the grounds that has been taken in this revision is that, the trial Court has not given any reason in the order. This Court called for the records from the trial Court and found that the learned Judicial Magistrate (Fast Track Court No.II - Magisterial Level), Erode, has passed a detailed order in C.M.P.No.5306 of 2012 on 15.09.2012. The learned counsel for Naidu has applied only for the one line docket order and has not obtained the certified copy of the detailed order. This Court handed over a copy of the detailed order to the learned counsel for Naidu and Saraswathi.

13. Heard Mr.C.S.Saravanan, learned counsel for Naidu and Mr.M.Karthik, learned counsel representing Mr.I.C.Vasudevan, learned counsel on record for Saraswathi.

14. The learned counsel for Saraswathi submitted that Saraswathi has not denied anywhere that the account was a joint account and therefore, the prayer of Naidu to examine the Branch Manager, HDFC Bank, may not be necessary at all.

15. Per contra, the learned counsel for Naidu submitted that though Saraswathi has not denied that it was a joint bank account, yet, she has not admitted that the cheque was issued by her husband from the same.

16. This Court gave its anxious consideration to the rival submissions.

17. In our criminal justice system, the accused can remain silent. His silence cannot, in all circumstances, be treated as an admission. Therefore, the complainant cannot afford to take a chance and rely upon the silence of the accused to his advantage.

18. The fact remains that Saraswathi's (late) husband Subramaniam alone had signed in all the five cheques. Therefore,

the complainant must prove that the cheques were issued from a joint account, for which, the examination of the Branch Manager, HDFC Bank, is essential.

19. In such perspective of the matter, the order dated 15.09.2012 passed in C.M.P.No.5306 of 2012 in S.T.C.No.309 of 2012 on the file of the Chief Judicial Magistrate Court, Erode [sic Judicial Magistrate Court (Fast Track Court No.II-Magisterial Level), Erode], is hereby set aside.

20. Ex consequenti, this criminal revision is allowed with the following directions:

(i) The trial Court shall summon and examine the Branch Manager, HDFC Bank, Erode and direct him to bring the account opening details, when he comes for deposing.

(ii) The trial Court shall complete the trial in S.T.C.No.309 of 2012 within three months from the date of receipt of a copy of this order.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate,
(Fast Track Court No.II
- Magisterial Level),
Erode.

2.TheDeputyRegistrar, with a direction to return the
(Crl.Side) original records to the trial
Madras High Court, Court immediately
Chennai - 104.

3.The Section Officer
Criminal Section High Court Madras

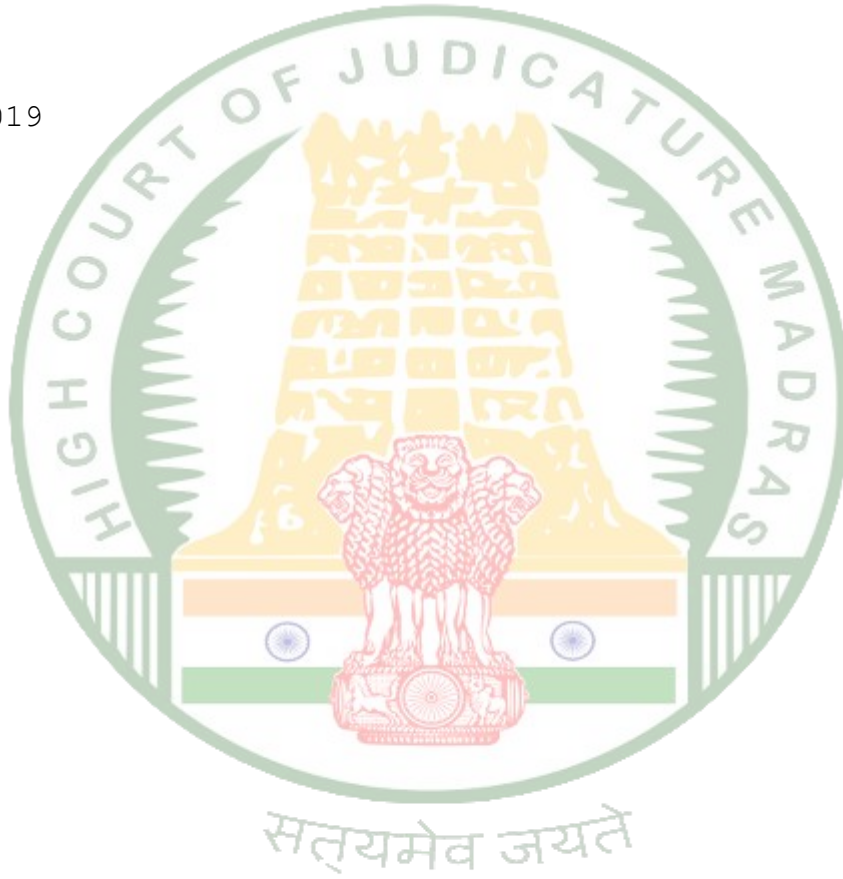
4.The Chief Judicial Magistrate Erode

+1 cc to Mr.C.S.Saravanan Advocate sr100472

+1 cc to Mr.I.C.Vasudevan Advocate sr100312

Cr1.R.C.No.1306 of 2012

aa02/12/2019



WEB COPY