

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :15.10.2019

DELIVERED ON :17.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.1408 of 2012

P.S.Thiyagarajan

.. Petitioner/
Accused

Vs.

R.Akila

.. Respondent/
Complainant

Criminal Revision filed under Section 397(1) r/w.401 Cr.P.C against the order dated 18.09.2012 passed in C.M.P.No.5711 of 2012 in S.T.C.No.183/2012 on the file of the Judicial Magistrate (Fast Track Court No.II), Erode by allowing the present criminal revision petition.

For Appellant : Mr.I.C.Vasudevan

For Respondent : Notice sent service awaited

ORDER

This revision is directed against the order dated 18.09.2012 passed in C.M.P.No.5711 of 2012 in S.T.C.No.183/2012 by the Judicial Magistrate (Fast Track Court No.II), Erode.

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

3. It is the case of Akila that Thiyagarajan represented to her that he is the Proprietor of Gomathi Tex and borrowed Rs.1,80,000/- (Rupees One Lakh Eighty Thousand) on 01.04.2009 for his business purposes. Towards the said loan, he issued three cheques for Rs.60,000/- (Rupees Sixty Thousand only) each dated 06.04.2009, 13.04.2009 and 20.04.2009 drawn on the account of "Gomathi Tex" with Indusland Bank. When Akila presented the three cheques, they were dishonoured for insufficiency of funds. Therefore, Akila issued a statutory demand notice dated 05.08.2009 to Thiyagarajan calling upon him to pay the cheque amount.

4. On receipt of the notice, Thiyagarajan issued a reply notice dated 21.08.2009 disputing the debt. Therefore, Akila

initiated a prosecution in S.T.C.No.183 of 2012 before the Judicial Magistrate, Fast Track Court II, Magisterial Level, Erode under Section 138 of the Negotiable Instruments Act, 1881 against Thiyagarajan. Thiyagarajan entered appearance and contested the case. He took a defence that the bank account, on which the impugned cheques were issued, is in the name of his son T.Sudhakar and that he was only a "Mandate Holder" and therefore, he cannot be prosecuted. At that juncture, Akila filed a petition in CrI.M.P.No.5711 of 2012 in S.T.C.No.183 of 2012 under Section 216 Cr.P.C for framing a charge under Section 420 IPC against Thiyagarajan.

5. After hearing either side, the trial Court has allowed CrI.M.P.No.5711 of 2012 on 18.09.2012, aggrieved by which Thiyagarajan is before this Court by filing the present revision under Section 397 r/w.401 Cr.P.C.

6. Heard learned counsel for Thiyagarajan, who submitted that the Fast Track Court, where the prosecution under Section 138 of the Negotiable Instruments Act is pending, has no jurisdiction to try a case under Section 420 IPC.

7. This Court is unable to countenance this submission because the Negotiable Instruments Act does not contemplate the creation of any Special Court for trial of cases under Section 138 of the Negotiable Instruments Act. In other words, the Fast Track Court, Magisterial level, is not a special Court under the Negotiable Instruments Act, but a regular Court that has been constituted by the Government with the approval of the High Court for speedy disposal of Negotiable Instruments Act cases. The FTC Magistrate is like any other Judicial Magistrate and has all the powers to try magisterial offences under Indian Penal Code and other penal laws.

8. Coming to the facts of this case, it is prima facie clear that Thiyagarajan had represented himself as Proprietor of Gomathi Tex and has obtained the loan from Akila. In the three impugned cheques, he has signed for Gomathi Tex. Beneath his signature, there are two expressions "Proprietor/Mandate Holder". Had he struck off the word "Proprietor", then one can say that Akila knew that he was only a Mandate Holder of Gomathi Tex. In the reply notice dated 21.08.2009, it is clearly stated as follows:

"Please take notice that I am instructed by my client P.S.Thiyagarajan, son of Subramani Mudaliar, Proprietor: "Gomathi Tex", No.11-C, Akilmedu 2nd Street, Erode - 638 001, to issue this registered reply notice to your notice dated 5.8.2009 issued on behalf of your client R.Akila, wife of V.Ramalingam, residing at 13/A, Gandhipuram, 3rd Cross, Pallipalayam, Erode - 638 006, Erode Taluk." (emphasis supplied)

9. Even in the reply notice, he had not stated that he was only a "Mandate Holder". The trial Court has given cogent reasons for allowing the petition in CrI.M.P.No. 5711 of 2012 filed for alteration of charges which does not warrant interference. The trial Court has rightly placed reliance on Section 255(3) and Section 259 Cr.P.C for allowing the prayer of Akila to alter the charge.

In the result, this Criminal Revision is devoid of merits and the same is dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Judicial Magistrate
(Fast Track Court No.II), Erode
2. The Public Prosecutor
Madras High Court
Chennai

+lcc to Mr.I.C.Vasudevan, Advocate sr.87705

CrI.R.C.No.1408 of 2012

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