

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1467 of 2012

S.Sabanayagam

..

Petitioner/Accused

Vs.

Muruganantham

..

Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the order dated 06.07.2012 passed in Crl.M.P.No.1318 of 2012 in C.C.No.53 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court), Dharmapuri.

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

For Respondent : Mr.S.Sudarshan

O R D E R

This criminal revision has been filed seeking to set aside the order dated 06.07.2012 passed in Crl.M.P.No.1318 of 2012 in C.C.No.53 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court), Dharmapuri.

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

3. It is the case of Sabanayagam that Muruganantham was well known to him; Muruganantham borrowed from him a sum of Rs.30,000/- on 11.07.2001, Rs.30,000/- on 03.08.2001 and Rs.30,000/- on 04.10.2001, totaling a sum of Rs.90,000/-, towards which, he gave a cheque dated 07.11.2001 for a sum of Rs.90,000/-, drawn on Bank of Baroda, Dharmapuri branch; Sabanayagam presented the said cheque on 07.11.2001 and the same was returned with the endorsement "Insufficient Funds and blank cheque signed reported lost on 28.06.1999"; therefore, Sabanayagam issued a statutory demand notice dated 21.11.2001, which was received by Muruganantham on 30.11.2001; since Muruganantham did not comply with the demand, Sabanayagam initiated a prosecution in C.C.No.2 of 2002 before the Judicial

Magistrate, Pennagaram, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against Muruganantham.

4. Muruganantham filed a private complaint in C.C.No.489 of 2001 before the Judicial Magistrate, Dharmapuri, against Sabanayagam, alleging that Sabanayagam has misappropriated the impugned cheque for prosecuting him under Section 138 of the NI Act and therefore, Sabanayagam is liable to be convicted for the offence under Section 420 IPC.

5. On an application filed by Muruganatham before the Principal Sessions Court, Krishnagiri, in CrI.M.P.No.1447 of 2007, C.C.No.2 of 2002 was transferred from the file of the Judicial Magistrate Court, Pennagaram to the file of the Judicial Magistrate Court No.I, Dharmapuri, to be tried along with C.C.No.489 of 2001. On transfer, C.C.No.2 of 2002 was renumbered as C.C.No.237 of 2007 on the file of the Judicial Magistrate Court No.I, Dharmapuri.

6. After constitution of the Court of Judicial Magistrate (Fast Track Court), Dharmapuri, to deal with cheque cases, the case in C.C.No.237 of 2007 was transferred from the file of the Judicial Magistrate Court No.I, Dharmapuri, to the file of the Judicial Magistrate (Fast Track Court), Dharmapuri and renumbered as C.C.No.53 of 2011.

7. At the instance of Muruganantham, the case in C.C.No.489 of 2001 was transferred from the file of the Judicial Magistrate Court No.I, Dharmapuri, to the file of the Judicial Magistrate (Fast Track Court), Dharmapuri and re-numbered as C.C.No.2 of 2012, to be heard along with C.C.No.53 of 2011.

8. Thus, at present, there are two cases before the Judicial Magistrate (Fast Track Court), Dharmapuri, viz., C.C.No.53 of 2011 that has been filed by Sabanayagam against Muruganantham under Section 138 of the NI Act and C.C.No.2 of 2012 that has been filed by Muruganantham against Sabanayagam under Section 420 IPC.

9. While that being so, Sabanayagam examined himself as PW1 in C.C.No.53 of 2011 and Muruganantham was called upon to cross-examine him.

10. In C.C.No.2 of 2012 Sabanayagam has filed CrI.M.P.No.664 of 2012 (old CrI.M.P.No.3867 of 2002) under Sections 204 and 245 Cr.P.C. for discharging him from the prosecution in C.C.No.2 of 2012.

11. Taking advantage of the same, Muruganantham filed Crl.M.P.No.1318 of 2012 in C.C.No.53 of 2011 (cheque case) and contended that the cross-examination of Sabanayagam should be deferred till the disposal of the discharge petition that has been filed by Sabanayagam in C.C.No.2 of 2012.

12. After hearing either side, the trial Court, by the impugned order dated 06.07.2012 in Crl.M.P.No.1318 of 2012 in C.C.No.53 of 2011, deferred the cross-examination of Sabanayagam till the disposal of the discharge application in Crl.M.P.No.664 of 2012 in C.C.No.2 of 2012.

13. Challenging the impugned order dated 06.07.2012 passed in Crl.M.P.No.1318 of 2012 in C.C.No.53 of 2011, Sabanayagam has preferred the present revision under Section 397 r/w 401 Cr.P.C.

14. Heard Mr.M.Karthik, learned counsel representing Mr.I.C.Vasudevan, learned counsel on record for Sabanayagam and Mr.S.Sudarshan, learned counsel for Muruganantham.

15. The fact remains that both Sabanayagam and Muruganantham have been prolonging this litigation from 2001 and have successfully managed to stall the progress of the two cases till date.

16. It is true that the decision in one case may have a bearing on the decision in other case, but, on that score alone, the cross-examination of Sabanayagam in the cheque case cannot be indefinitely stalled. Unlike the Code of Civil Procedure, in the Code of Criminal Procedure, there is no concept of joint trial. There can be only simultaneous trial. The evidence in one case cannot be used as a substantive piece of evidence in another case unless it falls within the scope of Section 33 of the Evidence Act.

17. In such perspective of the matter, this Court is constrained to set aside the impugned order dated 06.07.2012 in Crl.M.P.No.1318 of 2012 in C.C.No.53 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court), Dharmapuri and issue the following directions:

(i) Muruganantham shall cross-examine Sabanayagam in the prosecution under Section 138 of the NI Act;

(ii) The question of discharge will come in C.C.No.2 of 2012 only after the pre-charge evidence adduced by Muruganantham is recorded under Section 244 Cr.P.C.;

(iii) Therefore, if evidence under Section 244 Cr.P.C. has not been recorded by the trial Court, then, the petition

filed by Sabanayagam for discharge, shall be dismissed by the trial Court, forthwith;

(iv) Opportunity should be given to Muruganantham to adduce evidence under Section 244 Cr.P.C.;

(v) If there are no prima facie materials, thereafter, Sabanayagam will be entitled to be discharged from the prosecution in C.C.No.2 of 2012;

(vi) If there are prima facie materials, charges should be framed against Sabanayagam in C.C.No.2 of 2012;

(vii) After completing the evidence in both cases, viz., C.C.No.53 of 2011 and C.C.No.2 of 2012, the trial Court shall deliver the final judgments in both cases on the same day;

(viii) Sabanayagam and Muruganantham are directed to appear before the trial Court on 20.12.2019 at 10.30 a.m.;

(ix) Sabanayagam and Muruganantham shall execute a bond for a sum of Rs.10,000/- with two sureties each, under Section 88 Cr.P.C. in C.C.No.2 of 2012 and C.C.No.53 of 2011, respectively.

(x) After the execution of bond, if Sabanayagam and Muruganantham abscond, a fresh FIR can be registered against them under Section 229-A IPC;

(xi) The trial Court is directed to complete the trial in C.C.No.53 of 2011 and C.C.No.2 of 2012 within three months from 20.12.2019.

In fine, this criminal revision is allowed. The Registry is directed to return the original records, if any, immediately to the Judicial Magistrate Court (Fast Track Court), Dharmapuri.

Sd/-

Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

nsd

To

The Judicial Magistrate,
(Fast Track Court),
Dharmapuri.

Copy To :

The Section Officer,
Criminal Section (Records)
Madras High Court,
Chennai - 104.

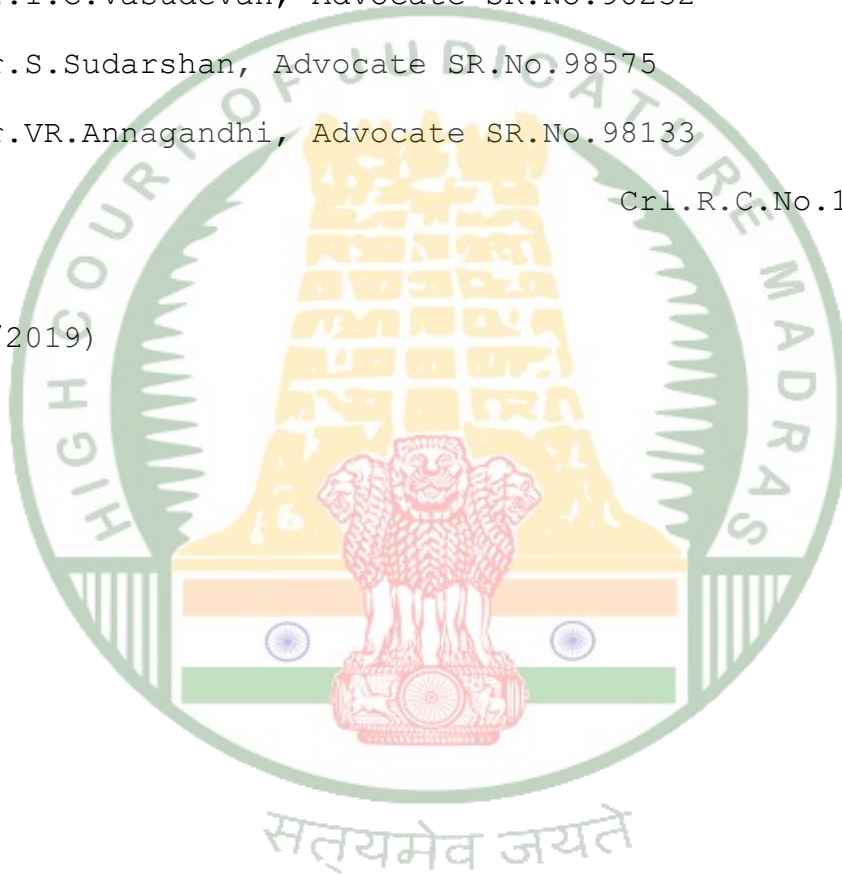
+1cc to Mr.I.C.Vasudevan, Advocate SR.No.98232

+1cc to Mr.S.Sudarshan, Advocate SR.No.98575

+1cc to Mr.VR.Annagandhi, Advocate SR.No.98133

CrI.R.C.No.1467 of 2012

RJI (CO)
GMY (27/11/2019)



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