

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2018

PRONOUNCED ON : 30.08.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.361 of 2013

and

MP.No.1 of 2013

S.Sarsheetta

... Petitioner/Accused

- Vs -

D.Subbarayulu Naidu

.. Respondent

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C., praying to set aside the order dated 07.01.2013 passed in Crl.MP.No.526 of 2012 in Crl.A.No.5 of 2011 on the file of the learned Additional District and Sessions Judge, Kancheepuram District at Chengalpattu.

For Petitioner :Mr.Prakash Goklaney

For respondent :Notice served.Respondent's Name Printed

No Appearance

O R D E R

This Criminal Revision Case has been filed by the petitioner/accused seeking to set aside the order dated 07.01.2013 passed in Crl.MP.No.526 of 2012 in Crl.A.No.5 of 2011 by the learned Additional District and Sessions Judge, Kancheepuram District at Chegalpattu.

2. The respondent/complainant filed a private complaint under Section 200 Cr.P.C against the revision petitioner/accused for the offence under Section 138 of Negotiable Act before the learned Judicial Magistrate No.1, Chegalpattu. The learned Magistrate taken the complaint on file in C.C.No.102 of 2009 and after trial, found the revision petitioner/accused guilty for the offence under Section 138 of Negotiable Instruments Act, convicted and sentenced her to undergo 6 months Simple Imprisonment and fine of Rs.5,000/-, in default, to undergo 2 weeks Simple Imprisonment and to pay a sum of Rs.12,50,000/- to the respondent/complainant as compensation by judgment dated

03.01.2011. Challenging the said judgment of the Trial Court, the accused preferred an appeal in Crl.A.No.5 of 2011 before the learned Principal Sessions Judge at Chengalpattu and the same was made over to the Fast Track Court, Chengalpattu. During pendency of the said appeal, the revision petitioner/accused filed a petition under Section 391 of Cr.P.C seeking to receive certain documents mentioned in the petition and the same was taken on file in Crl.MP.No.526 of 2012. The learned Additional District and Sessions Judge, after enquiry, dismissed the petition by order dated 07.01.2013. There against, the accused has filed the present revision before this Court.

3. The main contention raised by the learned counsel for the revision petitioner is that the cheques in question were really not given voluntarily and had been obtained under duress at the instance of the complainant at the police station. In order to prove the same, she wanted to produce certain documents i.e., letter dated 15.02.2008, the agreement dated 15.05.2008 and complaint dated 3.12.2007 addressed to the Commissioner of Police, regarding the conduct of the respondent/complainant even earlier having obtained cheques by sheer force. The documents were not immediately available to the revision petitioner/accused at the time of trial, due to her husband has been suffering from neurological problems and she herself has been suffering from several ailments and the condition of the family were miserable, she could not get the documents and now only she got the said documents and therefore, she wanted to file the same before the Appellate Court. The learned counsel further submitted that if the petition was allowed, no prejudice would be caused to the respondent/accused. However, the Appellate Court failed to consider the said facts and simply dismissed the petition, which warrants interference.

4. The learned counsel for the respondent would submit that regarding above mentioned documents in the petition, the petitioner has already stated in her reply to the statutory notice dated 22.01.2009, which was marked as Ex.P13 before the trial Court and the learned counsel for the petitioner also cross-examined the respondent/complainant about the said documents. Even all the 3 documents were shown to the respondent/complainant at the time of cross examination during trial. Neither she produced the documents before the Court nor marked the said documents during trial even though all the above documents, which have been sought to be produced before the Appellate Court were available in the hands of the revision petitioner. Therefore, the contention raised by the learned counsel for the revision petitioner that the documents were not available at the time of trial and due to the illness of the petitioner and her husband, she could not file the documents before the Trial Court is not acceptable. The Appellate Court rightly dismissed the petition filed by the revision petitioner

and there is no need to interfere with the order passed by the Appellate Court.

5. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent and also perused the entire materials available on records.

6. On a reading of the order passed by the Appellate Court, it is seen that the Appellate Court has discussed the reason for dismissing the petition and considered the evidence of PW-1-respondent/complainant herein. Since the petitioner has not satisfied the scope of Section 391 of Cr.P.C, the said petition was dismissed. On a reading of the entire materials, it reveals that knowing fully well that the documents are very much available during the trial when especially the same were shown to respondent during the cross examination, the petitioner, only to drag on the proceedings, has filed the said petition only during appeal stage, as if they were not available during the trial. Even after completing the respondent's side evidence, the petitioner could have marked those documents on her side by summoning the police Inspector or herself could have come to the witness box, whereas, she failed to do the same also. Therefore, in order to fill up the gap, one cannot invoke Section 391 of Cr.P.C at the appeal stage. The appellate Court clearly stated the reason for dismissing the petition. The petitioner has not come to the Court with clean hands. This Court does not find any perversity in the order passed by the Appellate Court.

7. In the result, this Criminal Revision Case is dismissed. The order dated 07.01.2013 passed in CrI.MP.No.526 of 2012 in CrI.A.No.5 of 2011 by the learned Additional District and Sessions Judge, Kancheepuram District at Chengalpattu, is hereby confirmed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

KMI

To

1. The Additional District and Sessions Judge,
Kancheepuram District at Chengalpattu.

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2.The Judicial Magistrate No.I
Chengalpattu

Cr1.R.C.No.361 of 2013

CNR (CO)
CB (15/10/2019)



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