

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.09.2019

PRONOUNCED ON : 16.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.551 of 2013

Abdul Safeer ... Petitioner/complainant

Vs

Sampath ... Respondent/accused

Criminal Revision preferred under Section 397 read with 401 Cr.P.C. challenging the judgment and order dated 01.11.2012 passed by the Principal District and Sessions Judge, Vellore in C.A.No.69 of 2012 reversing the judgment and order dated 15.02.2012 passed by the Judicial Magistrate, Katpadi in C.C.No.153 of 2010.

For Petitioner : Mr.M.Santhanaraman

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 01.11.2012 passed by the Principal District and Sessions Judge, Vellore in C.A.No.69 of 2012, in and by which, the judgment and order dated 15.02.2012 passed by the Judicial Magistrate, Katpadi in C.C.No.153 of 2010, acquitting the accused has been set aside on the solitary ground that the trial Court lacks territorial jurisdiction to deal with the case.

2.For the sake of convenience, the petitioner and the respondent will be referred to as complainant and accused respectively.

3.It is the case of the complainant that, he is doing leather business in Vaniyambadi and the accused, who has his business in Chennai, had made purchases from him, towards which, the accused was liable to pay a sum of Rs.13,45,384/-; towards the said liability, the accused gave two cheques for Rs.5,20,815/- and Rs.4,24,569/- dated 05.07.2010 and 07.07.2010 respectively, both drawn on Bank of India, Mount Road branch, Chennai; when the two cheques were presented by him

(complainant) in his bank account in Central Bank of India, Periamet branch, Chennai, they were returned unpaid with the endorsement "funds insufficient"; therefore, he (complainant) approached an advocate in Katpadi and issued a statutory demand notice dated 11.07.2010 to the accused and the said notice was returned with the endorsement "left"; hence, he (complainant) initiated a prosecution against the accused in C.C.No.153 of 2010 before the Judicial Magistrate, Katpadi under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act").

4. The complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P3. The accused examined himself as D.W.1 and marked Ex.D1 and Ex.D2.

5. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 15.02.2012 in C.C.No.153 of 2010 acquitted the accused, the relevant paragraphs of which are read as under :

"39. After hearing the arguments of both the sides already it is discussed in detail that the disputed cheques were issued for a legally enforceable debt. As far as this case is concerned unless the cause of action is proved then only a suitable punishment can be inflicted on the accused. It is clear that based on the issuance of demand notice from Katpadi alone this case has been filed. As per the dictum laid down by the Honourable Apex Court and the High Court this Court has no territorial jurisdiction to try this case and this Court derives jurisdiction only when a cause of action arises within its jurisdiction. Admittedly no cause of action has arisen in this Court.

40. In the result, the accused is found not guilty u/s.138 of the Negotiable Instruments Act and accordingly the accused is acquitted u/s.255 (1) Cr.P.C."

Challenging the acquittal, the complainant preferred C.A.No.69 of 2012 in the Principal District and Sessions Court, Vellore, in which, the said Court, by judgment and order dated 01.11.2012, without going into the merits of the case, set aside the judgment and order dated 15.02.2012 passed by the trial Court on the sole ground that the trial Court lacks territorial jurisdiction, besides directing the trial Court to return the material documents filed by the complainant and further directing the complainant to prefer a fresh complaint before the jurisdictional Court. The operative portion of the judgment and order dated 01.11.2012 of the appellate Court is as under :

"In the result, appeal is allowed and accordingly, the trial Court verdict is hereby set aside. The trial Court is directed to return the

material documents filed by the appellant, without prejudice to the right of the appellant.

The appellant is directed to prefer a fresh Complaint before the Competent Court, within four weeks from the date of receipt of material documents from the trial Court and condonation of delay in this regard will take recourse to the proviso to Section 142(b) of the N.I. Act."

Challenging the aforesaid directions, the complainant has filed the present revision under Section 397 r/w 401 Cr.P.C.

6. Learned counsel for the complainant submitted that when the appellate Court had found that the complainant has proved the ingredients of the offence under Section 138 of the NI Act, it should have convicted and sentenced the accused and ought not to have passed the aforesaid directions.

7. This Court is unable to persuade itself to concur with the aforesaid submission. Even prior to the judgment of the Supreme Court in Dashrath Rupsingh Rathod Vs. State of Maharashtra [(2014) 9 SCC 129], where the office of the complainant's advocate is situate and from where the statutory demand notice had emanated, did not have the territorial jurisdiction. The trial Court records show that, the accused has taken this aspect as one of his defences and had pleaded that, by prosecuting him in Katpadi in respect of a transaction, which mainly occurred in Chennai, he stood prejudiced as he was not able to get his witnesses to depose on his behalf. Thus, this is not a case, where the accused implicitly submitted to the territorial jurisdiction of the Judicial Magistrate, Katpadi. Under such circumstances, the appellate Court was perfectly justified in issuing the aforesaid directions.

In the result, the judgment and order dated 01.11.2012 passed by the appellate Court in C.A.No.69 of 2012 is confirmed and this Criminal Revision is dismissed as being devoid of merits.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District and Sessions Judge,
Vellore.

2.The Judicial Magistrate,
Katpadi.

Copy to:
The Section Officer
Criminal Section,
High Court, Madras-104.

CRL.R.C.No.551 of 2013

BS (CO)
CB(05/11/2019)



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