

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.07.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.RC.Nos.2208 & 2209/2002

P.S.Moorthi

..Petitioner in both petitions

-Vs-

J.A.Nazar

..Respondent in both petitions

Prayer:- Revisions filed under section 397 and 401 Cr.P.C., to set aside the order dated 10.12.2002, passed in CMP.Nos.1468 & 1469/2002 in CC.No.384/2001 on the file of the learned Judicial Magistrate No.III, Erode

For Petitioner in both petitions : Mr.A.K.Kumaraswamy

For Respondent in both petitions : Mr.J.Srinivasan,
Legal Aid Counsel

COMMON ORDER

The above Criminal Revision Petitions have been filed seeking to set aside the order dated 10.12.2002 passed in CMP.Nos.1468 & 1469/2002 in CC.No.384/2001 on the file of the learned Judicial Magistrate No.3, Erode.

2 CMP.No.1468/2002 has been filed seeking to direct the Officer Incharge, Magisterial Section, Collectorate, Coimbatore to produce certain documents and CMP.No.1469/2002 has been filed seeking to call for certain documents from the Telecom Department pertaining to telephone Numbers 252245, 226143, 223345 and the connection holder's particulars and last six months billing particulars.

3 The revision petitioner is the complainant and the respondent herein is the accused. For the sake of convenience, the parties are referred to as 'the complainant' and 'the accused'.

4 The complainant has filed a complaint in CC.No.384/2001 as against the accused for the offence u/s.138 of

the Negotiable Instruments Act, 1881 [in short 'the Act'] before the learned Judicial Magistrate No.3, Erode.

5 The case of the complainant is that the accused had borrowed a sum of Rs.1,75,000/- on 27.03.2001 from the complainant and in discharge of the liability, the accused issued a cheque on the same day towards the amount. When the cheque was presented for collection, the same had been returned with an endorsement 'funds insufficient'. The complainant, after issuing a statutory notice, has filed the complaint against the accused.

6 During the pendency of the trial, the accused had filed Crl.OP.No.635/2002 before this Court to quash the proceedings in CC.No.384/2001 and this Court, vide order dated 25.01.2002, had dismissed the said Original Petition. After completion of the complainant's side evidence, the accused filed CMP.No.1468/2002 and CMP.No.1469/2002 under section 91 Cr.P.C., praying to send for the report of Mr. Justice P.R.Gokulakrishnan's Commission of enquiry records and to send for the documents from the Telephone Department regarding particulars of certain telephone numbers.

Brief facts in CMP.No.1468/2002:-

7 The accused was doing Watch Sales and Service business in the name and style as 'Alankar Watch Company' at Coimbatore for the past 20 years and that, on 14.02.1998, at the time of Bomb blast in Coimbatore, the shop of the accused was damaged due to the fire set by the rowdy elements and all the stocks and documents were stolen by them and that, during such incident, the cheque in question, involved in the case, was also stolen. Since the accused was away at Kerala for medical treatment, his Manager had given a complaint before B3 Police Station, Coimbatore and on coming to know about the incident, the accused returned and found that his shop was completely damaged and valuable articles were found missing. Thereafter, the Government of Tamil Nadu had appointed the Hon'ble Mr. Justice Gokula Krishnan [Retd] to enquire into the incident and that the accused had claimed compensation by filing appropriate petition and the Government, accepting his petition, also awarded compensation to the tune of Rs.1,60,000/- towards loss to the shop. Hence, the accused had sought for production of the following documents through the Officer In-charge, Magisterial Section, Collectorate, Coimbatore:-

1. Compensation claiming application dated 24.02.1998 and 25.02.1999 given by Mr.J.a.Nazar, Proprietor, Alankar Watch Company, 121, Cross Cut Road, Coimbatore-12 in Ref.No.BB No.211/98.
2. All the photos with negatives in BB.No.211/98.
3. Final order given by the Commissioner through Collector in

above Ref.BB.No.211/98.

4. The Final compensation amount given to Mr.J.A.Nazar particulars.

8 The complainant has filed a counter before the Trial Court stating that it is false on the part of the accused to state that on 14.02.1998, his shop was fully damaged on account of fire being set by the rowdy elements. It is stated by the complainant that the accused had borrowed the amount during the year 2001 and the cheque was also issued in the year 2001, much after the above incident and that no intimation had been given by the accused to the Bank with regard to the alleged missing of the cheque, as stated in the petition filed by the accused in CMP.No.1468/2002. If the contention of the accused is true, he ought to have given instructions to the Bank for stop payment of the cheque. Further, at the time of framing of charge as well as during questioning u/s.313 Cr.P.C., the accused had not raised any plea with regard to the missing of cheque. The accused had given a reply dated 25.05.2001 through his counsel for the statutory / legal notice dated 12.05.2001 issued by the complainant and no whisper has been made about the Commission headed by the Hon'ble Mr. Justice Gokula Krishnan [Retd] and the award of compensation by the State Government to the accused. Thereby, the circumstances under which, the documents were sought to be sent for from the Collectorate, has no relevance to the facts of the present case and that, the said documents, will not, in any way, be helpful for arriving at the just decision of the case. Further, the attempt of the accused in sending for those documents are only with an intention to prolong, protract and holding up the proceedings of the case. The defence was neither raised in the reply notice nor at the time of initial questioning, framing charge and questioning u/s.313 Cr.P.C and prayed for dismissal of the petition.

BRIEF FACTS IN CMP.No.1469/2002:-

9 The accused had averred that the complainant is having connection with one Manju Finance, at Door No.46, New Masjid Street, SK Building, Erode-3 and he is residing at No.33, TS-18, SKC Road, ECM Layout, Erode and that the complainant has no address as mentioned in the complaint and in order to prove that the complainant is permanently residing at Erode, the accused had sought for particulars of documents regarding the telephone connection in respect of the telephone numbers 252245, 226143, 223345 and the connection holders' particulars and the details of the billing of the last six months.

10 The complainant had filed a counter refuting the averments raised by the accused and stated that the complainant is having permanent residential address and that, in the Reply notice dated 25.05.2001, the accused had not denied the address

and residence of the complainant and nothing had been stated about the alleged connection between the complainant and M/s.Manju Finance. Further, the documents sought to be called for from the Telephone Department, Erode, have no relevance to the facts of this case and the same will not, in any way, helpful for arriving at the just decision of the case. It is also averred in the counter that the accused had earlier filed Crl.OP.No.635/2002 on the file of this Court seeking to quash the proceedings in CC.No.384/2001 on the ground that the Trial Court had no territorial jurisdiction to take the complaint on file. However, this Court, after hearing the rival submissions, dismissed the said petition vide order dated 28.01.2002, holding that the Trial Court has got jurisdiction to entertain the complaint. It is also averred by the complainant that the complainant had produced the attested true copy of the Family Card issued by the Civil Supplies and Consumer Protection Department and Telephone Bill for the phone number 31453 and the Settlement Deed dated 26.02.1990 to prove and substantiate that the complainant is having permanent residence and address at Pottinaicken Valasu, Velangattuvalasu [P.O], Erode Taluk. The complainant would state that after completion of the evidence on the side of the prosecution, while the case was pending for the defence witness for a long time from 04.01.2002 onwards, the accused had changed his counsel and on petition, the accused was permitted to cross examine P.Ws.1 and 2 and after getting several adjournments, the accused had filed a vexatious petition to prolong, protract and holding up the proceedings and prayed for dismissal of the same.

11 The Trial Court, after hearing the submissions made on either side, passed orders on 10.12.2002, allowing the petitions filed by the accused, against which, the present revisions are filed.

12 The learned counsel for the revision petitioner/complainant would submit that, at the outset, the documents [cited above] sought for by the respondent/accused are not all necessary to decide the case on hand and that the incident, as alleged by the respondent/accused, is not denied. The occurrence pertains to the year 1998 ; whereas, the amount has been borrowed by the respondent/accused 27.03.2001 and the disputed cheque had been issued on 27.04.2001. The legal notice was issued on 12.05.2001 and a reply had been sent by the respondent/accused on 25.05.2001. Though a vague reply had been sent by the respondent/accused, no mention has been made about the cheque number etc. He would submit that the cheque was issued only during the year 2001 and strangely the respondent/accused had spoken about the incident that had happened three years back. Admittedly, no complaint has been given to the concerned Bank with regard to the theft of cheque

books and even at the time of initial questioning ; framing of charge and also at the time of questioning u/s.313 Cr.P.C., such a plea had not been raised by the respondent/accused stating that the cheques were lost and that suitable steps were taken by him. Learned counsel would also submit that it was only a vexatious attempt on the part of the respondent/accused to protract the trial. It is the further submission of the learned counsel that the respondent/accused had filed CrI.OP.No.635/2001 before this Court to quash the proceedings in CC.No.384/2001 on the ground of territorial jurisdiction of the Trial Court to try the case and this Court had dismissed the petition on 25.01.2002, holding that the Trial Court has got jurisdiction to try the case and that the petitioner/complainant had produced all necessary and relevant documents to prove that he is residing at Pottanaicken Valasu, Velankattuvalasu Post, Erode Taluk and thereby, the documents sought for from the Telephone Department are not relevant to decide the present case and that the learned Trial Judge, without analysing all these factors, by a cryptic order, had allowed the petitions filed by the respondent/accused and would pray for allowing of the revision petitions by setting aside the order dated 10.12.2002 passed in CMP.Nos.1468 & 1469/2002.

13 Per contra, Mr.J.Srinivasan, Legal Aid Counsel appearing for the respondent/accused submitted that the respondent/accused had taken a plea in his reply notice dated 25.05.2001, wherein he had stated that the complainant had misused one of the cheques lost during rioting in Coimbatore during the year 1998 and would submit that the Trial Court, on proper appreciation of facts and record, had rightly allowed the petitions and the said order warrants no interference and would pray for dismissal of the revision petitions.

14 I have carefully and anxiously considered the submissions made on either side and also perused the materials placed including the impugned order dated 10.12.2002 passed in CMP.Nos.1468 and 1469/2002 in CC.No.384/2001.

15 A thorough reading of the order, impugned herein, dated 10.12.2002 made in CMP.Nos.1468 and 1469/2002 in CC.No.384/2001, would reveal that the Trial Court, by a cryptic order, had allowed the applications filed by the respondent/accused and no reasons, whatsoever, has been assigned by the Trial Court to show as to how the documents sought for by the respondent/accused, are necessary for arriving at the just decision in the case and when the respondent/accused had not taken the plea of losing his vital documents during the riot that took place during the year 1998 at the time of initial questioning ; framing of charge and also at the time of questioning u/s.313 Cr.P.C. The grounds attributed for summoning

the documents cited above, in the opinion of the Court, cannot be sustained. Further, the alleged incident of vandalism is alleged to have taken place during the year 1998. Though a reply with a weak defence that the cheques have been lost has been taken, no particulars have been furnished in the reply notice. Further, no complaint has been made to the Bank with regard to the missing of the cheques and no instructions have been given to the Bank for stopping the payment of the cheques. The question of jurisdiction has already been dealt with by this Court in CrI.OP.No.635/2001 and that the petitioner/complainant has also produced necessary documents to prove that he is residing at Pottanaickenvalasu, Velankattuvalasu Post, Erode Taluk and District.

16 In view of the aforesaid discussions, the criminal revision petitions are allowed and the order dated 10.12.2002 made in CMP.Nos.1468 and 1469/2002 in CC.No.384/2001 by the learned Judicial Magistrate No.3, Erode, is hereby set aside.

17 The learned Judicial Magistrate No.3, Erode is directed to complete the trial in CC.No.384/2001 as expeditiously as possible and not later than six months from the date of receipt of a copy of this order.

18 Before parting with the matter, this court places on record the commendable service rendered by Mr.J.Srinivasan, learned counsel as Legal Aid Counsel. He is entitled to a remuneration from the Tamilnadu Legal Aid Service Authority as per the norms.

Ap

Sd/--
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

1.The Judicial Magistrate No.3
Erode.

2. -Do- Thro' The Chief Judicial Magistrate
Erode.

3.The Secretary,
The Tamil Nadu Legal Services Authority
Chennai.

4.The Public Prosecutor
High Court, Chennai.

+1cc to Mr.A.K.Kumarasamy, Advocate, SR.No.55512

Cr1.RC.Nos.2208 & 2209/2002

Kak (14/09/2019)



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