

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.RC.No.889 of 2019

A.H.Nizarudeen

...Petitioner

Vs.

1.Gokulam Chits and Finance Co.Pvt.Ltd.,
Rep.by its power of attorney Harikrishnan,
S/o.Ramasamy,
No.66, Arcot Road,
Kodambakkam, Chennai 600 024.

2.Laila Electronics and Home Appliances,
Rep.by its partner A.H.Nizarudeen,
No.12/23, Saramedu Main Road,
Karumbukadai, Coimbatore - 8.

....Respondents

Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the order dated 17.07.2019 in CrI.M.P.No.185 of 2019 in CrI.A.No.13 of 2018 on the file of the I Additional District and Sessions Judge, Coimbatore, Coimbatore District.

For Petitioner : Mr.R.Rajarajan

For Respondents: Mr.L.Rajasekar

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O R D E R

The revision petition has been filed against the order passed in CrI.MP.No.185 of 2019 in C.A.No.13 of 2018 dated 17.07.2019 dismissing the petition filed under Section 391 of Cr.P.C to remand back the case to take additional evidence and marking the documents.

2. The brief facts of the case is that the petitioner and second respondent were tried for an offence under Section 138 of the Negotiable Instruments Act, 1881 (in short "the Act") in C.C.No.305 of 2017 on the file of the learned Fast Track Court, Judicial Magistrate II, Coimbatore. The trial Court found the accused guilty and convicted them for offence under Section 138 and 141 of the NI Act and A1 was sentenced to pay a fine of Rs.10,000/- and the petitioner / A2, being a partner of the 2nd respondent / A1, was directed to pay the fine amount and in default, to undergo one month simple imprisonment and the petitioner / A2 was sentenced to undergo one month simple imprisonment and to pay the cheque amount of Rs.4,03,020/- as compensation to the complainant within one month. Against which, the accused have filed an appeal in C.A.No.13 of 2018 on the file of the learned District and Sessions Judge, Coimbatore. During the pendency of the appeal, the accused have filed a petition in C.M.P.No.185 of 2019 in C.A.No.13 of 2018 under Section 391 Cr.P.C. In that petition, it had been contended that the Power of Attorney of the 1st respondent was examined as P.W.1 and Exs.P.1 to P.9 were marked and that on the side of the accused, the bank manager was examined as D.W.1. D.W.1 had deposed that the details of date of issuance of cheque book in favour of the accused were not available with the bank. Thereafter, the accused counsel before the trial Court was unable to cross examine P.W.1. It had been contended that 2nd respondent is a partnership firm and that the necessary partners were not added as parties in the above case which was filed under Section 142 of the NI Act. Further, the 1st respondent, being a chit company, had not proved that there was a legally enforceable debt and that Ex.P.9 (statement of account) was issued by the 2nd respondent and that there was no endorsement of the date of issuance of alleged cheque for Rs.4,03,020/, in the statement of account and there is no whisper in the complaint when the cheque was issued. Further, it had been contended that during the time of trial, the petitioner's previous counsel has filed application under Section 311 Cr.P.C for 3 occasions, but he was not able to cross-examine PW1 due to his over-sight and in the said circumstances, the petitioner was convicted by the trial Court and in the interests of natural justice, one opportunity has to be given to the petitioner to disprove the case of the 1st respondent. Further, it had been contended that the 1st respondent / complainant had issued a demand notice for non-payment of the chit amount in chit group No.J2H1334JMM9 to the 2nd respondent / accused and one Lailabi and A.H.Ziauddin dated 17.07.2019. Further, the 1st respondent / complainant had sent a legal notice through his counsel to Lailabi and A.H.Ziauddin dated 07.06.2010 and the 1st respondent also sent a legal notice through his counsel to the 2nd respondent, Lailabi

and A.H.Ziauddin dated 28.04.2011, whereas the 1st respondent / complainant did not send any legal demand notice to the petitioner / 2nd petitioner and thereby, contended that the 1st respondent / complainant did not comply with the requirements under Section 138 (b) of the NI Act and thereby, the petition had been filed seeking to remand the case back to the trial Court for taking additional evidence and marking the following documents:-

LIST OF DOCUMENTS

SL.No	DATE	DOCUMENTS
1	17.07.2019	Demand Notice sent by the respondent to the 1 st appellant company, Lailabi and A.H.Ziauddin (3Nos) (Original)
2	07.06.2010	Legal Notice sent through his counsel by the respondent to the 1 st appellant company, Lailabi and A.H.Ziauddin (3 Nos) (Original)
3	28.04.2011	Legal Notice sent through his counsel by the respondent to the 1 st appellant company, Lailabi and A.H.Ziauddin (3 Nos) (Original)

3. The 1st respondent / complainant had filed a counter stating that the petitioner / accused has suppressed many facts in petition filed before the Appellate Court. Further before the Trial Court, the accused had filed application under Section 311 Cr.P.C on three occasions and they were allowed and the matter was posted for cross-examining P.W.1. Despite, having given opportunity, the petitioner / accused did not cross-examine the 1st respondent / complainant and thereafter, evidence was closed and once again the application under Section 311 Cr.P.C has been filed before the trial Court and the same was dismissed and thereafter, on proper adjudication, the trial Court had convicted the petitioner / accused. The Appellate Court after hearing both sides and after perusing the documents and the records of the trial Court had dismissed the petition. Against which the present petition has been filed.

4. The learned counsel for the petitioner would submit that the petitioners have not cross-examined the 1st respondent / complainant and it is necessary that the additional documents have to be marked, to prove the case of the appellants. The Appellate Judge failed to take into consideration, the

necessity for marking those documents and had erroneously dismissed the petition.

5. Per contra, the learned counsel for the 1st respondent / complainant would submit that sufficient opportunity was given to the petitioner to cross-examine P.W.1. Petition under Section 311 Cr.P.C was filed thrice and though the trial Court had given opportunity to cross-examine P.W.1, the petitioner has not availed the opportunity. Further, the documents sought to be marked as additional documents, by way of additional evidence, are not relevant to the case and the Appellate Court finding that the petitioner has not availed the opportunity to cross examine the 1st respondent / complainant and that the documents are not relevant to the case had rightly dismissed the petition. He would submit that the petition has been filed only for the purpose of protracting the rendering of judgment in the appeal.

6. This Court heard both side arguments and carefully perused the documents and the order passed by the Appellate Court.

7. The Appellate Court finding that though several opportunities were given to the petitioner / accused to cross-examine the P.W.1 / complainant he had not availed the opportunity and further had held that it was not due to oversight of the counsel for the petitioner before the trial Court. The Appellate Court has also found that the trial Court had found the petitioner / accused was the active partner in the second respondent's company and that the petitioner / A2 has signed in Ex.P.1 - cheque, as a partner and held that there was no illegality in not impleading the other partners. The Appellate Court has also found that the 1st respondent / complainant had sent a legal notice dated 22.07.2011 which had been marked as Ex.P.6 and held that the complaint was filed as per the procedures envisaged under Section 138 (b) of the NI Act.

8. The Appellate Court has also found the arguments with regard to the corrections in the cheque would be advanced at the time of hearing of the appeal and that the documents sought to be marked as additional evidence were not relevant to the case on hand, had dismissed the petition for additional evidence.

9. Further the Appellate Court had held even in the petition filed by the petitioner seeking for taking additional evidence, no ground has been raised to show that the marking of the documents are necessary to decide the appeal and that the documents sought to be marked are also not relevant to decide the appeal.

10. In the considered opinion of this Court, the Appellate Court had rightly dismissed the petition. As stated by the Appellate Court, the grounds with regard to the corrections in the cheque can be raised by the petitioner / appellant at the time of arguments / hearing of the appeal.

11. I do not find any infirmity in the order passed by the Appellate Court. Accordingly, the Criminal Revision Petition is dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The I Additional District and Sessions Judge,
Coimbatore, Coimbatore District.

+1cc to Mr.R.Rajarajan, Advocate sr.97196

+1cc to Mr.L.Rajasekar, Advocate sr.97258

Cr1.RC.No.889 of 2019

mp(co)
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