

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1420 of 2018 and

Crl.M.P.No.16602 of 2018

P.S.Chezhiyan

... Petitioner

Vs

S.Kalyanasundaram

... Respondent

PRAYER: Criminal Revision Case filed under Article 397 r/w401 of Criminal Procedure Code to set aside the order in Crl.M.P.No.32 of 2018 in Crl.A.No.62 of 2017 on the file of the learned III Additional District Judge, Poonamallee dated 11.08.2018 against S.T.C.No.24 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial Level No.II, Poonamallee.

For Petitioner : Mr.D.J.Venkatesan

Emily Venkatesan

For Respondent : Mr.Ragavendran

O R D E R

This Case has been filed by the petitioner to set aside the order made in Crl.M.P.No.32 of 2018 in Crl.A.No.62 of 2017 on the file of the learned III Additional District Judge, Poonamallee dated 11.08.2018 against S.T.C.No.24 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial Level No.II, Poonamallee.

2. The revision petitioner has filed a private complaint against the respondent herein for the offence under Section 138 of Negotiable Instruments Act and the same was taken up on file in S.T.C.No.24 of 2013 before the learned Judicial Magistrate, Fast Track Court, Magisterial Level No-II, Poonamallee. After fulfilled trial, the learned Magistrate dismissed the petition. Against which the petitioner herein filed the appeal before the learned III Additional District and Sessions Judge, Thiruvallur @ Poonamallee.

3. During pendency of the appeal, the petitioner had filed a petition under Section 392 Cr.P.C., to receive the documents filed along with the petition in Crl.M.P.No.32 of 2018 as additional documents on the side of the petitioner/appellant. According to the learned counsel for the petitioner, the additional document is nothing but the judgment and decree made in O.S.No.87 of 2013. After hearing the both sides, the

Crl.M.P.No.32 of 2018 was dismissed by the learned III Additional District and Sessions Judge, Tiruvallur @ Poonamallee. Challenging the order passed by the learned III Additional District and Sessions Judge, the petitioner/complainant has filed the present revision before this Court.

4. According to the petitioner, there was a suit filed by him and subsequently, due to the compromise entered into between the parties, the same was withdrawn by the petitioner. The decree itself shows that there was a settlement between the parties. Therefore, the documents are necessary for them to decide this case on hand. The learned Additional District Judge without considering this aspect simply dismissed the petition filed by the petitioner, hence, the order warrants interference.

5. The learned counsel for the respondent would submit that the private complaint filed by the petitioner/complainant before the trial Court and the same was dismissed by the learned Magistrate in S.T.C.No.24 of 2013 dated 27.03.2017 for the reason that the complainant has not proved his case. The Judgment and decree in O.S.No.87 of 2013 is nothing to do in deciding the appeal, which is pending before the learned III Additional District Judge, Tiruvallur @ Poonamallee in Crl.A.No.62 of 2017. There is no recital in the judgment and Decree in O.S.No.87 of 2013 with regard to the settlement. Therefore, the learned Additional District Judge has rightly dismissed this case and the same does not require any interference.

6. Heard the learned counsel for the petitioner as well as learned counsel for the respondent and perused the entire materials available on record.

7. The learned Magistrate after elaborate discussion, dismissed the petition. The complainant has not proved his case beyond reasonable doubt. The appeal before the appellate Court, during the pendency of the case, to receive the additional evidence in the Judgment and Decree passed in O.S.No.87 of 2013, on the file of the learned III Additional District and Sessions Judge, Tiruvallur @ Poonamallee and on reading of the petition, it is seen that nothing is stated with regard to the present cheque in question. Therefore, the judgment and decree in O.S.No.87 of 2013 will not be helpful to the petitioner/complainant. If at all the complainant has already filed the appeal, he can very well prove his case and since the appellate Court is a fact finding Court, the petitioner/complainant can canvass the appellate Court and get a judgment in his favour. If at all any material is available, the

documents ought to have been filed as additional evidence. It is always open to the petitioner to proceed with the appeal.

8. On a reading of the entire materials, this Court does not find any perversity or infirmity in the order passed by the learned III Additional District and Sessions Judge, Tiruvallur @ Poonamallee in Crl.M.P.No.32 of 2018 in C.A.No.62 of 2017 dated 11.08.2018 and there is no merit in this Revision case.

11. Accordingly, this Criminal Revision Case is dismissed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sbn/rli

To

- 1.The learned Judge,
III Additional Sessions and District Court,
Poonamallee.
- 2.The Judicial Magistrate,
Fast Track Court,
Magisterial Level No-II, Poonamallee.

+lcc to Mr.D.J.Venkatesan, Advocate sr.no.14236
+lcc to Mr.R.Murali, Advocate sr.no.13980

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