



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.09.2019**

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)Nos.1108 and 1085 of 2018

M.Loganathan

... Petitioner/Complainant in both Crl.OPs.

Vs.

R.Kavitha

... Respondent/Accused in both Crl.OPs.

PRAYER in Crl.O.P(MD)No.1108 of 2018: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to admit the original petition and call for the records of Crl.R.P.No.25 of 2015 on the file of the learned 4th Additional District and Sessions Judge, Madurai, confirm the judgment made in S.T.C.No.865 of 2012 on the file of the learned Judicial Magistrate No.2 (Fast Track Judge), Madurai and set aside the order of acquittal passed in Crl.R.P.No.25 of 2015, dated 23.12.2016 and S.T.C.No.865 of 2012, dated 26.02.2015 and allows this original petition.

PRAYER in Crl.O.P(MD)No.1085 of 2018: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to admit the original petition and call for the records of Crl.R.P.No.24 of 2015 on the file of the learned 4th Additional District and Sessions Judge, Madurai, confirm the judgment made in S.T.C.No.579 of 2013 on the file of the learned Judicial Magistrate No.2 (Fast Track Judge), Madurai and set aside the order of acquittal passed in Crl.R.P.No.24 of 2015, dated 23.12.2016 and S.T.C.No.579 of 2013, dated 26.02.2015 and allows this original petition.

For Petitioner : Mr.A.Raja in both Crl.O.Ps

For Respondent : Mr.M.Kannan in both Crl.O.Ps

C O M M O N O R D E R

These petitions have been filed challenging the order passed in Crl.R.P.Nos.25 and 24 of 2015 by the IV Additional District and Sessions Judge, Madurai, confirming the order passed in S.T.C.Nos.865 and 579 of 2012 passed by the learned Judicial Magistrate No.2, Fast Track Court, Madurai, thereby, dismissing the complaint lodged by the petitioner under Section 138 of the Negotiable Instrument Act, as against the respondent.

2.The learned counsel for the petitioner submitted that the petitioner initiated proceedings under Negotiable Instrument Act, as against the respondent, alleging that the husband / respondent was doing online trading business and on the request, the petitioner invested some amount for profit. Thereafter, in order to repay the said amount, the respondent issued cheque on behalf of her husband



and when the same was presented for collection, the same was returned as 'in sufficient fund'. Thereafter, he caused legal notice and thereafter, initiated proceedings under the Negotiable Instrument Act, in S.T.C.Nos.865 and of 579 of 2012. Though the petitioner proved the case beyond the reasonable doubt, the trial Court acquitted the respondent, without appreciating the evidence. As against the said acquittal, the petitioner preferred the revision before the IV Additional District Judge, Madurai, and the same was also dismissed, confirming the order passed by the trial Court. He further submitted that the Appellate Court ought to have entertained an appeal under Section 374 of Cr.P.C. But, the Appellate Court has entertained the case as revision as against the acquittal order. He also submitted that the petitioner proved his case by adducing witnesses and necessary documents even then the trial Court failed to appreciate the evidence and acquitted the respondent herein. In fact, the respondent did not even elaborate the evidence by examining the defence witnesses and hence, both the Courts below erred in dismissing in the complaint lodged by the petitioner. Therefore, he prays for set aside the order passed by the Court below.

3.The learned counsel for the respondent submitted that the petitioner lodged the complaint as against the respondent alleging that the respondent issued a cheque on behalf of her husband to repay the amount collected by her husband. When the said cheque was presented for collection, the same was returned for the reason as 'in sufficient fund'. The petitioner also caused legal notice and lodged the complaint. He further submitted that the trial Court dismissed the complaint for the reason that the petitioner failed to prove the case beyond reasonable doubt and the First Appellate Court confirmed the same and he prays for dismissal of these petitions.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

5. These petitions have been filed to set aside the order passed by the Court below in Crl.R.P.Nos.24 and 25 of 2015, dated 23.12.2016 and S.T.C.Nos.865 and 579 of 2013, dated 26.02.2015. The petitioner is the complainant and lodged the complaint as against the respondent under the Negotiable Instrument Act. The trial Court conducted full-fledged trial, in which, the petitioner examined himself as PW.1 and marked EX.P1 to Ex.P6. After considering the same, the trial Court concluded that the petitioner did not prove his case beyond reasonable doubt. As against which, the petitioner preferred the Criminal Revision Petitions before the IV Additional District and Sessions Court under Section 397 of Cr.P.C. It is also seen that though the First Appellate Court heard the matter by way of revision, the First Appellate Court appreciated the evidence in a

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6. When the petitioner availed appeal remedy in the form of revision, now he sought for permission of this Court to file an appeal as against the order of acquittal. In this regard, it is relevant to extract the provision under Section 374 of Cr.P.C.

'' (1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial; may appeal to the High Court.''

7. In the case on hand, the complaint lodged by the petitioner was dismissed by the trial Court and acquitted the respondent. The First Appellate Court numbered the revision since it was filed under Section 397 of Cr.P.C. When the petitioner exhausted the appeal remedy before the Sessions Court, he cannot again avail such remedy of filing the appeal as against the acquittal. The trial Court dismissed the complaint by an order dated 26.02.2015 and the Appellate Court dismissed the revision on 23.12.2016. After the period of three years, the present petitions have been filed as against the order passed by the trial Court. There is absolutely no explanation for the delay in filing these petitions. Therefore, the present petitions nothing but clear abuse of process of law and hence, they are liable to be dismissed.

8. In view of the above discussions, these Criminal Original Petitions are devoid of merits and the same are dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The 4th Additional District and Sessions Judge,
Madurai.
2. The Judicial Magistrate No.2 (Fast Track Judge),
Madurai.

+2 CC to MR.M.KANNAN, Advocate SR-90049, 90048

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25.09.2019

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