



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : **05.09.2019**

CORAM:

THE HON'BLE MR.JUSTICE **N. ANAND VENKATESH**

Crl.O.P.No.10974 of 2017
and
Crl.M.P(MD)No.7484 of 2017

M.Chenthan

... Petitioner/Complainant

Vs.

K.Jeyachandrasekaran @ Raja

... Respondent/Accused

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the order passed by the learned IV Additional District and Sessions Judge, Madurai in Cr.R.P.No.25 of 2011 dated 26.08.2012 and set aside the same.

For Petitioner : Mr.P.Gunasekaran
For Respondent : Mr.A.B.Prabhakar

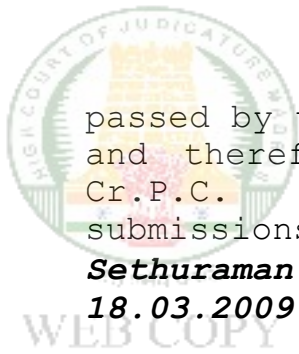
O R D E R

This petition has been filed challenging the order passed by the Court below entertaining a revision petition filed under Section 397 of Cr.P.C. against the order passed by the trial Court in an application filed under Section 91 of Cr.P.C.

2. The petitioner is the complainant in the 138 complaint filed against the respondent. The complaint was filed in the year 2005. During the course of the proceedings, the respondent filed an application under Section 91 of Cr.P.C. to direct the complainant to produce three cheques, which are not the subject matter of the present complaint. This application was dismissed by the trial Court by an order, dated 20.05.2011.

3. As against the said order, the respondent filed Criminal Revision Petition No.25 of 2011 before the Court below under Section 397 of Cr.P.C. This petition was allowed by the Court below by an order, dated 26.08.2013.

4. The learned counsel for the petitioner submitted that the Court below did not have the jurisdiction to entertain the revision against the order passed by the trial Court in an application filed under Section 91 of Cr.P.C. He further submitted that the order



passed by the trial Court is in the nature of an interlocutory order and therefore the revision is barred under Section 397 (2) of Cr.P.C. The learned counsel in order to substantiate his submissions relied upon the judgment of the **Hon'ble Supreme Court in Sethuraman Vs. Rajamanickam, in Crl.A.No.486-487 of 2009, dated 18.03.2009.**

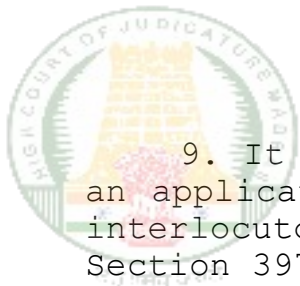
5. The learned counsel appearing on behalf of the respondent submitted that the Court below has properly applied its mind and allowed the revision petition. He further submitted that the petitioner had categorically admitted in the cross examination that he has received six cheques from the respondent. Therefore, these cheques were sought to be produced before the Court below in order to strengthen the defence of the respondent. The learned counsel concluded his arguments by submitting that there is no ground to interfere with the order passed by the lower Court.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. As rightly contended by the learned counsel for the petitioner, the case is squarely covered by the judgment of the Hon'ble Supreme Court, which has been referred supra.

8. The relevant portion of the judgment is extracted here under:-

''4.Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397 (2) Cr.P.C. The trial Court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent / accused and the only defence that was raised, was that his signed cheques were lost and that the appellant / complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders, i.e., one on the application under Section 91 Cr.P.C. for production of documents and other on the application under Section 311 Cr.P.C. for recalling the witness, were the orders of interlocutory nature, in which case, under Section 397 (2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed.



9. It is clear from the above judgment that the order passed in an application under Section 91 of Cr.P.C., is in the nature of an interlocutory order. Therefore, a revision petition is barred under Section 397 (2) of Cr.P.C.

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10. In view of the above, the Court below did not have the power or jurisdiction to entertain the revision petition filed by the respondent. On this ground alone, the order passed by the lower Court is liable to be interfered with and set aside.

11. In the result, the order passed by the learned IV Additional District and Sessions Judge, Madurai, in Cr.R.P.No.25 of 2011 dated 26.08.2013 is hereby set aside and accordingly, this Criminal Original Petition is allowed. There shall be a direction to the Fast Track Court No.1 (Judicial Magistrate Level), Madurai, to dispose of S.T.C.No.557 of 2012 within a period of two months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (A.S)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The IV Additional District and Sessions Judge,
Madurai.
- 2.The Fast Track Court No.1 (Judicial Magistrate Level),
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.A.B.PRABHAKAR, Advocate SR-85733.

+1 CC to Mr.P.GUNASEKARAN, Advocate SR-85937.

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CS(25.09.2019) 3P 6C