

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.09.2020

PRONOUNCED ON : 22.09.2020

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. No.776 of 2020 & Crl.M.P. No.5451 of 2020

R. Arun Deepak

...Petitioner

.vs.

M. Vijaya Kumar

...Respondent

Criminal Revision Petition filed under Section 397 Cr.P.C. read with Section 401 Cr.P.C. seeking to set aside the order of interim compensation dated 04.01.2020 passed by the IV Additional District Judge, Coimbatore, in Crl.M.P. No.1 of 2019 in Crl.A. No.501 of 2018, which appeal was filed against the judgment dated 22.10.2018 passed in C.C. No.252 of 2016 on the file of the Judicial Magistrate (FTC No.I), at Coimbatore.

For petitioner Mr. T. Annaamalai

ORDER

This case was taken up through video conferencing.

2 For the sake of convenience, the petitioner and the respondent will be referred to as the accused and the complainant respectively.

3 It is the case of the complainant that the accused and his brother Prakash became friendly with him and on 29.03.2015, the complainant gave a sum of Rs.10 lakhs as hand loan to the accused, which the accused assured to repay in two months; towards the discharge of the said loan, the accused gave a post dated cheque bearing date as 18.11.2015 on 13.10.2015; when the complainant presented the cheque on the due date, it was returned with the endorsement "payment stopped by drawer"; in order to preempt the complainant from taking any action, the accused issued a notice dated 24.11.2015 alleging that he had lost the impugned cheque on 12.10.2015 near Singanallur and that has been misused by the complainant; the complainant refuted the

allegations and issued a statutory demand notice dated 07.12.2015 to the accused, for which, the accused issued a rejoinder notice dated 14.12.2015; since the accused did not comply with the demand notice, the complainant initiated a prosecution in C.C. No.252 of 2016 under Section 138 of the Negotiable Instruments Act, 1881 (for short "the NI Act") before the Judicial Magistrate (Fast Track Court No.1), Coimbatore.

4 The complainant examined himself as P.W.1 and marked 11 exhibits. From the side of the accused, two witnesses, viz., Prahladhan (D.W.1) and the accused (D.W.2) were examined and 12 exhibits were marked.

5 After considering the evidence on record, the trial Court, vide judgment and order dated 22.10.2018, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo six months simple imprisonment and pay a sum of Rs.10 lakhs as compensation to the complainant, in default to undergo two months imprisonment.

6 Challenging the said conviction and sentence, the accused preferred Crl.A. No.501 of 2018 before the Principal District & Sessions Court, Coimbatore, which was made over to the file of the IV Additional District Court, Coimbatore, in which, the complainant filed Crl.M.P. No.1 of 2019 under Section 148 of the NI Act for a direction to the accused to pay 20% of the cheque amount as interim compensation.

7 The accused contested the petition by filing his counter. However, the appellate Court, by order dated 04.01.2020, placing reliance on the judgment of the Supreme Court in Surinder Singh Deswal vs. Virender Gandhi¹, has directed the accused to pay 20% of the cheque amount as interim compensation, aggrieved by which, the accused has preferred the present criminal revision.

8 Heard the learned counsel for the accused, who submitted that under Section 148 of the NI Act, it is not mandatory for the appellate Court to direct the accused to deposit 20% of the cheque amount as interim compensation and in a deserving case as the present one, where there are sufficient materials to impugn the trial Court judgment, the appellate Court ought not to have passed the order impugned.

9 Further, the learned counsel for the accused took this Court through the evidence of the complainant and submitted that the debt has not been proved satisfactorily. He contended that the impugned cheque was lost by the accused and that is why, the accused had issued "stop payment advice" to his bank.

10 In the opinion of this Court, at this stage, the merits of the case cannot be gone into. But, a startling finding of the trial Court deserves to be extracted as under:

"12. It is well settled principle of law that the accused can raise any number of defence to probablise his case. However, such defence should not be contradictory with one

¹ AIR 2019 SC 2956

another. In this case, the accused himself contradicting that how the possession of disputed cheque had gone to the possession of the complainant and it shows that the accused is not sure about his defence. In this circumstances, this Court comes to the conclusion that the defence of stolen of Ex.P.3 cheque by the complainant is not at all believable."

11 It is true that in Section 148 of the NI Act, the expression "may" has been used and not "shall". This means that, in a given case, awarding interim compensation is the discretion of the appellate Court. In the instant case, in one breath, the accused has stated that he does not know the complainant at all and that he had lost the cheque in Singanallur, but, in another, he has stated that the complainant has stolen the cheque from his office. Prahladhan (D.W.1), brother of the accused, has stated that the son of the complainant visited the office of the accused for obtaining loan on 12.10.2015.

12 In such view of the matter, this Court does not find any infirmity in the order passed by the appellate Court, directing the accused to pay 20% of the cheque amount as interim compensation to the complainant, warranting interference. It is made clear that whatever is stated above, is only for the limited purpose of deciding this criminal revision and the appellate Court shall proceed with the appeal uninfluenced by the observations made in this order.

In the result, this criminal revision stands dismissed. Connected Crl.M.P. stands closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1.The IV Additional District Judge
Coimbatore

2.The Judicial Magistrate (FTC No.I)
Coimbatore

3.The Public Prosecutor
Madras High Court, Chennai - 600 104

Crl.R.C. No.776 of 2020

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