IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.Nos.668 and 1416 of 2019
and Crl.MP.No.18413 of 2019

V.Rajavelu .. Petitioner in Crl RC No.668/2019/
Respondent in Crl RC No.1416/2019

Vs

Bose Ponnambalam .. Respondent in Crl RC No.668/2019/
Petitioner in Crl RC No.1416/2019

Prayer in Crl.R.C.No.668/2019: Criminal Revision filed under Section 397 and 401 of the Code of Criminal Procedure, seeking to set aside the order of remand dated 11.06.2019 made in C.A.No.19 of 2018 on the file of the learned Principal Sessions Judge, Dharmapuri, reversing the order dated 17.02.2012 made in C.C.No.63 of 2011 on the file of the learned Judicial Magistrate (FTC), Dharmapuri.

Prayer in Crl.R.C.No.1416/2019: Criminal Revision filed under Section 397 and 401 of the Code of Criminal Procedure, seeking to set aside the order of the learned Principal Sessions Judge, Dharmapuri, dated 11.06.2019 made in C.A.No.19 of 2018 only insofar as it remand C.C.No.63 of 2011 on the file of the learned Judicial Magistrate (FTC), Dharmapuri, and consequently direct the Hon'ble Principal Sessions Judge, Dharmapurai, to take evidence and pass appropriate orders of punishment and compensation.

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For Petitioner in Crl. RC No.668/2019/ Respondent in Crl.RC No.1416/2019 : Mr.N.Manoharan

For Respondent in Crl RC No.668/2019/ Petitioner in Crl RC No.1416/2019 : Mr.Silambannan, Senior Counsel for M/s.Kaavya Silambanan

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COMMON ORDER

The petitioner in Crl.R.C.No.668 of 2019, who is the respondent in Crl.R.C.No.1416 of 2019, is the accused in C.C.No.63 of 2011 on the file of the learned Judicial Magistrate No.I, Dharmapuri. The petitioner in Crl.R.C.No.1416 of 2019, who is the respondent in Crl.RC.No.668 of 2019, is the complainant. For the sake of convenience, the parties are referred to as per their litigative status before the trial court.

2. The accused faced trial under Section 138 of the Negotiable Instruments Act, 1881 and he was acquitted by the Trial Court in C.C.No.63 of 2011. However, on appeal in Crl.A.No.19 of 2018, vide order dated 11.06.2019, the appellate court namely, the learned Principal Sessions Judge, Dharmapuri, set aside the acquittal order and remanded the matter to the trial Court for fresh consideration. Challenging the same, the accused filed Crl.R.C.No.668 of 2019.

3. In Crl.R.C.No.1416 of 2019, the complainant laid challenge to the very same order of the learned Principal Sessions Judge, Dharmapuri, dated 11.06.2019 made in C.A.No.19 of 2018 only insofar as it remands C.C.No.63 of 2011 to the file of the learned Judicial Magistrate (FTC), Dharmapuri, and consequently seeks a direction to the learned Principal Sessions Judge, Dharmapurai, to pass appropriate orders as regards the punishment and compensation.

4. The facts, in brief, are as follows :

4.1. The complainant and the accused are known to each other, as the accused is doing chit fund business, besides working in a Government department, wherein, the complainant was a subscriber. Out of such acquittance and faith, the complainant lent a sum of Rs.10,50,000/-, when accused requested for the same to purchase a house. To discharge the said liablility, the accused issued two post-dated cheques drawn on the Bank of Baroda, Dharmapuri Branch, favouring the complainant.

4.2. When the cheques were presented for collection on 18.10.2004, they were returned on the next day with endorsements "Insufficiency of Funds". Thereafter, the complainant presented the same twice for collection, but in vain. Hence, within the stipulated statutory period, he sent a notice dated 24.02.2005, which was returned. Thereafter, he filed the private complaint, which ended in acquittal by the trial Court.

4.3. On appeal, the appellate court reversed the judgment of the trial Court. The said judgment is questioned by the accused as well as the complainant, as stated above.

5. Learned counsel for the accused as well as the learned Senior Counsel for the complainant contended that the trial Court as well as the Appellate Court have not appraised the

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pleadings and materials adduced by the respective parties in a proper perspective, while passing the orders.

6. Learned counsel for the accused contended that the appellate court, while remanding the matter, went into the merits of the case and made observations, which will adversely affect the interest of the accused. It is also contended that the appellate court fell in error in reversing the judgment of the trial Court and the same needs to be interfered with.

7. On the other hand, the learned Senior Counsel for the complainant submitted that the appellate court, after appreciating the materials placed before it, has rightly held that there are arguable points in the appeal. However, without rendering its judgement on merits, the Appellate Court has remanded the matter to the trial Court for fresh consideration. Hence, he sought to set aside the order impugned herein.

8. Heard both sides and perused the materials available on record.

9. It is to be noted that the accused deliberately evaded the service of notice. Relying upon the judgment of the Apex Court in C.C.Alavi Haji V. Palapetty Muhammed and another, the appellate Court held that when the notice was sent by registered post to the correct address, the mandatory requirement of issuance of notice in terms of Clause (b) of Proviso to Section 138 of the Negotiable Instruments Act, 1881, stands complied with, even if the notice is not served, but Section 27 of the General Clauses Act, 1897 is complied with. However, while remanding the matter to the trial Court for fresh consideration, the appellate court fell in error in dealing with the merits of the case, which will affect the interest of the parties. Hence, this Court is inclined to set aside the judgment dated 11.06.2019 passed by the learned Principal Sessions Judge, Dharmapuri, in Crl.A.No.19 of 2018 and the judgment dated 17.02.2012 passed by the learned Judicial Magistrate (FTC), Dharmapuri, in C.C.No.63 of 2011 and are accordingly, set aside and the matter is remitted to the trial Court for passing afresh order.

10. The learned Judicial Magistrate (FTC), Dharmapuri, is directed to dispose of C.C.No.63 of 2011, on merits and in accordance with law, after affording due opportunity of hearing to both the parties, within a period of three months from the date of receipt of a copy of this order. Both the parties are at liberty to adduce evidence either in oral or documentary to support their respective claims in accordance with law. The trial Court shall conduct the case on day-today basis and without causing any undue delay.

11. Both these Criminal Revision Cases stand allowed to the

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extent indicated above. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge,
   Dharmapuri.

2. The Judicial Magistrate (FTC),
   Dharmapuri.

+2cc to Mr.N.Manokaran, Advocate, S.R.No. 13882, 13883

Crl.R.C.Nos.668 and 1416 of 2019

VSN II(CO)
GN(25/06/2020)

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