



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order
02.08.2021

Date of Pronouncing Order
06.08.2021

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

CrI.R.C.No.763 of 2018
and
CrI.M.P.No.8746 of 2018

Nedunchezhiyan

...Petitioner

Vs.

Dominic Savio

...Respondent

PRAYER : Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to set aside the order passed in C.M.P.No.552/2017 in CrI.A.No.40/2017 passed by the learned I, Additional District Judge, Tindivanam dated 07.04.2018.

For Petitioner : Mr.S.Parthasarathy
For Respondent : No Appearance

O R D E R

The matter is heard through "Video Conference".

2. The revision petitioner is the accused herein. The respondent herein filed C.C.No.42/2014 before the learned Judicial Magistrate No.I, Thindivanam, for the dishonor of cheque, under Section 138 of Negotiable Instruments Act.

3. After trial, the case was ended in acquittal on the ground that the complaint has been filed, within 6 days of issuing legal notice and hence the provisions of Section 138 of Negotiable Instruments Act. Accordingly, the learned Magistrate, dismissed C.C.No.42/2014 and hence, he preferred criminal appeal in C.A.No.40/2017. Pending appeal, the complainant has filed CMP.No.552/2017, to receive additional document and the same was allowed. Hence, the criminal revision by the accused.

4. Heard, the learned counsel for the petitioner. The learned counsel for the respondent is absent.



5. Before the first appellate Court, it is submitted by the complainant that what was marked as documents No.D5, D6 and D7, are fraudulent in nature. Actually, the accused had sent reply and it was inadvertently filed to be marked during the trial. Ex.D3 notice was signed by one A.Rosemary and she is not a family member. However, she is the women living in the same street who son's name is Dominic Durairaj. It was resisted by the accused that in the cross examination, P.W.1 has stated that he has not received any reply. Furthermore, the respondent/complainant did not object while marking Exs.D5, D6 and D7 and hence, the learned Additional District Judge, Tindivanam, allowed the petition and rejected the contention of the respondent/accused.

6. The accused is the revision petitioner herein. The respondent herein filed C.C.No.42/2014 before the learned Judicial Magistrate No.I, Dhindivanam under Section 138 of Negotiable Instruments Act, in respect of dishonor of cheque dated 20.01.2004 to the tune of Rs.8 lakhs. After trial, the case was ended in acquittal on the ground that the case has been filed within, 6 days of the notice served upon the respondent. On the point of limitation, the case has been ended in acquittal.

7. Aggrieved against the said order, the complainant has preferred C.A.No.40/2013 before the first Additional District Judge, Thindivanam. Pending appeal, the private complainant has filed C.M.P.No.552/2017 under Section 391 of Cr.P.C., to receive further evidence and to mark the actual reply notice given by the accused. The said application has been allowed by observing that the copy of the reply notice said to have been given by the accused was marked as Ex.D2, which was alleged to be fabricated document to sue the convenience of the accused, which was considered by the trial Court and hence, aggrieved against the order, allowed the C.M.P.No.552/2017.

8. The learned counsel for the petitioner would contend that the reply notice given by the accused is already marked as Ex.D5 and acknowledgment is marked as Ex.D6 and the complainant has not objected the marking of Exs.D5, D6 and D7 and further contended that the matter stated in Exs.D2, D3 and D4, reply notice has received by the Advocate in appeal are the one and the same.

9. The sum and substance behind filing of the CrI.M.P.No.55/2017 is that Ex.D2 is the reply notice and Ex.D3 is the acknowledgment therefor and EXs.D5, D6 and D7 are the reply notice given by the learned counsel for the accused and the acknowledgment therefor and postal receipt.



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10. The main contention of the respondent/private complainant is that Ex.D3 acknowledgment appears to have been signed by one A.Rosemary and there is no such person in the family of the complainant. Complainant name is Dominic Savio and it is the further case that on enquiry, one women is living in the same street who son's name is Dominic Durairaj and hence, notice and acknowledgment was signed by one A.Rosemary and not by family member of the complainant and hence, it is contended that reply notice submitted by the accused that was marked as Ex.D2 is different from original reply received by one A.Rosemary and further allegation is that the accused has altered the reply to fit to his case and further stated that the reply notice, which was received by the said A.Rosemary, contains certain averments that the accused has received Rs.1 lakh and handed over blank cheque and hence, he wanted to produce the document.

11. In view of the factual position and also taking note of the fact that the appeal is the continuation of the trial, an opportunity has to be given to the complainant to state this case properly. Considering the fact that why that appeal is pending before the concerned Additional District Judge, Thindivanam, I am not expressing any opinion as to the genuineness of the statement made by the private complainant and the same is for trial namely cross examination of P.W.1 in the appeal and hence, the order passed by the learned Additional District Judge, Thindivanam, does not suffer from any irregularity or illegality or warranting interference.

12. Accordingly, this criminal revision case is dismissed. It is open to the accused-revision petitioner herein to make suggestive case with the cross examination of P.W.1. Further, on the question of limitation, as observed by the trial Court, it is also left open for consideration by the trial District Judge at the time of disposal of the case. Accordingly, this revision is dismissed with a direction to the learned Additional District Judge to complete the trial, within a period of 12 weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar



AT

To

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1. The I, Additional District Judge,
Tindivanam.

COPY TO:

The Section Officer,
Criminal Section,
High Court, Madras.

+1 CC to Mr.S.Parthasarathy, Advocate, Sr.No. 39236.

Crl.R.C.No.763 of 2018 and
Crl.M.P.No.8746 of 2018

PA (CO)
LS (26/08/2021)