



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(RESERVED ON : 27.07.2021)

(PRONOUNCED ON : 15.09.2021)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.R.C.NO.1093 OF 2017 AND CRL.M.P.NO.10226 OF 2017
AND

CRL.R.C.NO.800 OF 2017 AND CRL.M.P.NO.7314 OF 2017

CRL.R.C.NO.1093 OF 2017:-

A.C.Maheswaran ... Petitioner/Complainant

.Vs.

B.Basha ... Respondent/Accused

CRL.R.C.NO.800 OF 2017:-

B.Basha ... Petitioner/Accused

.Vs.

A.C.Maheswaran ... Respondent/Complainant

COMMON PRAYER:-

Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., to set aside the judgment dated 27.04.2017 made in CrI.A.No.2 of 2017 on the file of the Principal District Court, Dharmapuri, in reversing the judgment dated 18.10.2016 made in S.T.C.No.55 of 2015, on the file of the Judicial Magistrate (Fast Track Court), Dharmapuri.

CRL.R.C.NO.1093 OF 2017:-

For petitioner : Mr.B.Sudarshan

For Respondent : Mr.C.Prabakaran



CRL.R.C.NO.800 OF 2017:-

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr.S.Sudharshan

WEB COPY

C O M M O N O R D E R

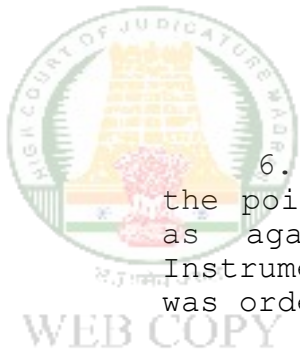
The petitioner in Crl.R.C.No.1093 of 2017, has filed a private complaint before the learned Judicial Magistrate, (Fast Track Court), Dharmapuri, under Sections 200 read with Sections 138 & 142 of the Negotiable Instruments Act, based upon the cheque for a sum of Rs.4,00,000/-. The private complaint proceeds on the footing that the revision petitioner has borrowed a sum of Rs.4,00,000/- on 13.05.2015 and thereafter, he had issued a cheque and on deposit the said cheque was dishonoured. Thereafter, the respondent herein has instituted a complaint and the same was taken on file in S.T.C.No.55 of 2015.

2. In support of his case, the complainant himself was examined as P.W.1 and has marked Exs.P1 to P4 and the revision petitioner/accused, himself was examined as R.W.1 and no evidence has been marked.

3. On consideration of both oral and documentary evidence, the learned Judicial Magistrate, has acquitted the accused holding that pre existence of legal evidence was not proved and accordingly, laid the acquittal. Hence, the private complainant has filed an appeal in Crl.A.No.2 of 2007 before the learned Principal Sessions Judge, Dharmapuri.

4. After hearing both the parties, the learned Judge has set aside the order of acquittal and ordered for re-trial of S.T.C.No.55 of 2015. As against the order of re-trial, after setting aside the order of acquittal, the private complainant has filed present Criminal Appeal in Crl.R.C.No.1093 of 2017 and the accused has filed Crl.R.C.No.800 of 2017 before this Court.

5. The learned counsel for the private complainant would contend that order of re-trial is bad in law. The learned counsel would further contend that the learned Trial Judge, as per the evidence available on record, ought to have laid the conviction and sentence against respondent/accused as prescribed under the provisions of the Negotiable Instruments Act and further stated that in view of the judgment of the Hon'ble Supreme Court reported in 2020 (3) MLJ (Crl) 257 (FB) [K.Rajalingam and others Vs. R.Suganthalakshmi and others], the revision has to be converted as an appeal since there could not be any revision against the acquittal.



6. This Court has given its anxious consideration is that the point as referred to and answered by the Full Bench is that as against the order of acquittal under the Negotiable Instruments Act but here, in the instant case, order of re-trial was ordered, assumes significance.

7. The learned counsel for the revision petitioner in Crl.R.C.No.800 of 2017 (respondent before the Magistrate Court) would contend that the Lower Appellate Court has erred in setting aside the order of acquittal and has not assigned any independent reason for setting aside the finding of the Trial Court and thereby committed the error.

8. After going through the order passed by the learned Principal Sessions Judge, Dharmपुरी in Crl.A.No.2/2017, the learned Sessions Judge however allowed the revision and ordered for re-trial. In order to facilitate the re-trial, the Court has also set aside the acquittal order and hence, the accused has preferred the Crl.R.C.No.800 of 2017 by relying upon the findings rendered by the learned appellate Court on the ground that since there was a finding by the appellate Court that in view of the discharge of the chit funds in favour of the appellate has rebutted the statutory presumption and further contended that de-nova enquiry is not required.

9. I have perused the evidence of P.W.1 and P.W.2 and documents Exs.P1 to P5 and the evidence of P.W.1 and hence I find that re-trial has ordered by the learned Appellate Court is not warranted.

10. As observed earlier, the acquittal order was set aside in order to facilitate re-trial. In view of the sufficiency of the evidence of on record, this Court is of the considered view that re-trial is not necessary. So also setting aside the acquittal order and getting an additional evidence is also not necessary. Accordingly, all the findings and order of re-trial by the learned Appellate Court is set aside and the matter is ordered to be heard by the appellate Court afresh and directed to pass orders based upon the material available on record.

11. In this view of the matter, both the Criminal Revisions are allowed accordingly. The order of acquittal passed in C.A.No.2 of 2017 sessions Judge, Dharmपुरी is set aside and order of re-trial is also set aside. The learned Principal Sessions Judge, Dharmपुरी is required to restore the criminal appeal No.2 of 2017 on his file. After hearing the both the parties pass orders on merits based upon the evidence already on record.



WEB COPY

12. With these observations, these Criminal Revision are allowed. Consequently, connected Crl.M.Ps are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nvi

To

1. The Judicial Magistrate (Fast Track Court),
Dharmapuri.
2. The Principal District Judge,
Dharmapuri.

+2ccs to Mr.S.Subramanian, Advocate, S.R.Nos.47058 & 47059
+1cc to Mr.C.Prabakaran, Advocate, S.R.No.47269

CRL.R.C.NO.1093 OF 2017 AND
CRL.M.P.NO.10226 OF 2017 AND
CRL.R.C.NO.800 OF 2017 AND
CRL.M.P.NO.7314 OF 2017

(CO)
PBS/07/10/2021