



WEB COPY



Crl.R.C.No.79 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.03.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.R.C.No.79 of 2020

T.Rajeshkumar.

... Petitioner

/versus/

Mrs.C.Saraswathi.

... Respondent

Prayer: Criminal Revision Petition is filed under Sections 397 and 401 of Cr.P.C.,
pleaded to set aside the judgment in Criminal Appeal No.169 of 2019 dated
26.11.2019 of XVIII Additional Sessions Judge, Chennai and call for the records
and confirmed the trial Court judgment against the accused in C.C.No.5283 of
2016, dated 23.01.2019, on the file of Metropolitan Magistrate (Fast Track-2),
Egmore at Allikulam, Chennai – 03.

For Petitioner : Mr.T.V.C.Kartheeban

For Respondent : Ms.B.Sindhiya,
for Ms.Laxmi Rajrathinam

ORDER

Page No.1/7



Crl.R.C.No.79 of 2020

WEB COPY

This Criminal Revision Petition is filed by the complainant being aggrieved by the order of Lower Appellate Court by setting aside the conviction and remanded back the complaint for affording opportunity to the accused to cross examine the complainant (P.W.1).

2. The brief facts of the case is that, a private complaint by the revision petitioner was presented against the respondent alleging that, four pre-dated cheques for total sum of Rs.75 lakhs issued in his favour to discharge the existing debt by Saraswathi bounced back for the reason “account closed” and therefore, she is liable to be punished for the offence under Section 138 of N.I. Act.

3. Before the trial Court, the complainant was examined as P.W.1 and marked 5 Exhibits. The accused/Saraswathi was found guilty and sentenced to undergo one year S.I and to pay compensation of Rs.1,50,00,000/- to the complainant as provided under Section 357 (3) of Cr.P.C was imposed, in default, to undergo 3 months S.I was ordered.

Page No.2/7



Crl.R.C.No.79 of 2020

WEB COPY

4. Challenging the same, the accused preferred appeal before the XVIII Additional Sessions Judge, Chennai and taken on file in C.A.No.169 of 2019, wherein, after considering the rival submissions, the Lower Appellate Court has remanded the C.C.No.5283 of 2016 back to the Metropolitan Magistrate, Fast Track Court No.II, Egmore, Chennai, to afford opportunity to the accused to cross examine P.W.1 and let in evidence if any on her side and dispose the case in accordance with law. This order is under challenge by way of Revision Petition by the complainant.

5. The Learned Counsel for the revision petitioner submitted that in spite of affording adequate opportunity to cross examine the complainant, the accused chose not to avail the opportunity and allowed the Judicial Magistrate to decide the case on merits. While so, ignoring the response of the accused, while questioning under Section 313 of Cr.P.C., the Lower Appellate Court has remanded the case back. Having admitted the liability, the unconditional order of remand by the Lower Appellate Court is also improper and liable to be set aside.



Crl.R.C.No.79 of 2020

WEB COPY

6. The Learned Counsel for the revision petitioner further brought to the notice of this Court that, when the respondent/accused sought for stay of execution of the trial Court order, conditional order was passed to deposit 20% of the cheque amount which the accused failed to comply. Therefore, the unconditional order of remand back the matter passed by the Lower Appellate Court is liable to be set aside.

7. Taking note of the conduct of the accused, this Court, after considering the material facts placed before this Court and the submission finds that, the liability to pay the cheque amount being contested by the accused and having found that, opportunity should be given to the accused to cross examine the complainant to establish her defence. Hence, the judgment of the trial Court has been set aside and the matter remanded back for affording opportunity to the accused.

8. Fair trial is a fundamental right. Having found that opportunity to



Crl.R.C.No.79 of 2020

cross examine the complainant been deprived to the accused, the Lower Appellate Court has remanded the matter back unconditionally. No doubt, an interim order to deposit 20% of the cheque amount been passed while considering the bail petition but that interim order was passed, after final order passed by the Lower Appellate Court will not sustain.

9. This Court, takes note of the fact that, the amount covered under four cheques runs to Rs.75 Lakhs and the case of the complainant is that the amount is due and payable in connection with chit transaction which was denied by the accused. This has to be tested by affording proper opportunity to the parties. This Court finds that there is no error in the order of the Lower Appellate Court, to remand the matter back and to afford opportunity to the appellant/accused to cross examine P.W.1.

10. Accordingly, this ***Criminal Revision Petition is dismissed.*** The



Crl.R.C.No.79 of 2020

trial Court is directed to take up the matter on priority basis and preferably complete the trial within a period of four months, from the date of receipt of copy of this order.

07.03.2023

Index :Yes/No.
Internet :Yes/No.
Speaking order/Non-speaking order
bsm

To:-

1. The Learned XVIII Additional Sessions Judge, Chennai.
2. The Learned Metropolitan Magistrate, Fast Track Court-2, Egmore at Allikulam, Chennai.



WEB COPY



Crl.R.C.No.79 of 2020

Dr.G.JAYACHANDRAN,J.

bsm

Crl.R.C.No.79 of 2020

07.03.2023