

Balakrishnan Vs. Tulasidas

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Court : Chennai

Decided On : Feb-04-1999

Reported in : 1999CriLJ2639

Judge : M. Karpagavinayagam, J.

Acts : Negotiable Instruments Act - Sections 138; Code of Criminal Procedure (CrPC) , 1974 - Sections 204

Appeal No. : Cri. R.C. No. 74 and Crl. M.P. No. 736 of 1999

Appellant : Balakrishnan

Respondent : Tulasidas

Advocate for Pet/Ap. : V. Raghavachari, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

M. Karpagavinayagam, J.

1. The order in Crl. M.P. No. 4921/99 in C.C. No. 21/91 passed by the learned Judicial Magistrate No. II, Dindigul on 1-12-1998 dismissing the application filed by the petitioner/accused to discharge him under Section 204, Cr. P.C. is under

challenge before this Court in this Revision.

2. On going through the petition, the impugned order and other documents filed along with the Revision, the following facts have emerged:--

(a) The complainant/respondent herein filed a private complaint in C.C. No. 21/97 on the file of the Judicial Magistrate No. II, Dindigul against the petitioner/accused for the offence under Section 138 of the Negotiable Instruments Act. After the complaint was taken on file, the petitioner filed an application before the trial Court in Crl. M. P. No. 2624/97 requesting for appointment of an expert to verify as to whether the date and the material particulars on the disputed cheque are written by the same person. The said application was heard and the same was dismissed on 4-7-97.

(b) Thereafter, the petitioner filed another application in Crl. M. P. No. 3103/97 for discharge. In this application also, the counsel for the parties were heard and the trial Court dismissed the said application on 15-9-97.

(c) Thereafter, P.W. 1 was examined-in-chief and cross on 7-11 -97. P. W. 2 was also examined-in-chief and cross on 17-12-97. For further examination, the case was posted on several dates. On 14-9-98, though the witnesses were present, the petitioner was absent. Therefore, non-bailable warrant was issued against him. However, on 24-9-98, he filed an application for recalling the warrant by giving undertaking that he would co-operate with the trial in future.

(d) After all the witnesses have been examined on the side of prosecution, on 30-10-98 the petitioner filed the application Crl. M. P. No. 4921/98 before the trial Court seeking for discharge under Section 204, Cr. P. C. In this application also, opportunity was given to both the parties by hearing them and ultimately, the said petition was dismissed on 1-12-98. This order is sought to be set aside in this Revision.

3. At the outset, I shall mention that this is the third application filed by the petitioner before the trial Court raising some ground or the other probably to gain some more time. Earlier, the first application was filed for appointment of an expert

and the same was dismissed on 4-7-97. The second application for discharge was filed and the same was also dismissed on 15-9-97. These two applications were filed prior to the commencement of examination of witnesses. But, the instant petition was filed under Section 204, Cr. P. C. to discharge, after examination of the prosecution witnesses was over. This is most unfortunate.

4. Section 204, Cr. P. C. would not apply to the present case, as already examination of witnesses was over. Secondly, on the very same ground, earlier application for discharge was dismissed by the trial Court on 15-9-97. It is beyond one's comprehension as to how this application for discharge came to be filed at the fag end of the trial.

5. The most agonizing feature is that the prayer made in this Revision is to set aside the order of the learned Judicial Magistrate No. II, Dindigul in Crl. M. P. No. 4921/98, dated 1-12-98 in dismissing the application filed for appointment of an expert to verify the signature. This is factually incorrect. The impugned order would show that the petitioner filed an application in Crl. M. P. No. 4921/98 for discharge under Section 204, Cr. P. C. and not for appointment of expert. Therefore, in my view, this case is a classic example, wherein the process of Court has been fully abused by the petitioner before the trial Court as well as this Court.

6. The ground urged before the trial Court for discharge is that the complainant would not have given the loan of Rs. 2 Lakhs to the accused and that, therefore, the issuance of cheque by the accused in favour of the complainant is false and that the complainant ought not to have filed the complaint, and he could seek his remedy through the Civil Court.

7. The trial Court elaborately considered this point and gave a fitting reply to the petitioner by dismissing the petition. The chronological details, which have been given in the impugned order would make it clear that the petitioner has no regard for the process of Court and virtually, he filed application after application on one ground or another, in order to defeat the purpose of trial. By this process, he has not only succeeded in delaying the trial but also made a mockery on the legal process of the Court.

8. In fact, when I noticed the manner in which the process of Court was abused, I thought of imposing costs on the petitioner. However, I do not think it fit to impose costs, since I feel, at least, in the future, the good sense would prevail in the mind of the petitioner so that he could face the trial by availing the opportunity being given by the trial Court and contest the matter. I am also pained to note that the petitioner had not been given proper advice before the above applications were filed before the Court.

9. With this observation, I deem it fit to dismiss the Revision, as I do not find any infirmity in the order passed by the trial Court. The trial Court is directed to continue the trial and dispose of the case as expeditiously as possible. If there is no co-operation from the petitioner any more, the trial Court shall see that the presence of the petitioner is secured by adopting coercive process and dispose of the case at an early date.

10. With this observation, the Revision is dismissed. Consequently, Crl. M. P. No. 736/99 stands dismissed.

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