

A.N. Baskaran Vs. C. Ramesh

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Court : Chennai

Decided On : Oct-12-2012

Judge : C.S. Karnan

Appeal No. : Crl.R.C.No.355 of 2010 & M.P.No.1 of 2010

Appellant : A.N. Baskaran

Respondent : C. Ramesh

Advocate for Pet/Ap. : For the Petitioner: K.S. Ganesh Babu, Advocate. For the Respondent: T. Surendran, Advocate.

Judgement :

(**PRAYER** :Criminal Revision is filed under Sections 397 and 401 of Cr.P.C., to call for the records and set-aside the orders dated 12.03.2010 passed by the learned I Additional Judge, City Civil Court, Chennai in Crl.M.P.No.1553 of 2009 in C.A.No.218 of 2008, by the learned I Additional Judge, City Civil Court, Chennai and dismiss the same with costs.)

The revision petitioner / respondent / complainant had preferred the present revision in Crl.R.C.No.335 of 2010 against the judgment made in Crl.M.P.No.1553 of 2009 in C.A.No.218 of 2008, on the file of learned I Additional Judge, City Civil Court, Chennai and dismiss the same.

2. The short facts of the case are as follows:-

The accused had borrowed a sum of Rs.55,000/- from the complainant for his urgent family expenses and promised to repay the amount within six months, with interest at the rate of 2% per month and had executed a promissory note to this effect. ON demand, the accused issued a cheque bearing No.576178, dated 20.01.2006 for a sum of Rs.61,000/- drawn on Canara Bank, Chennai-2, in favour of the complainant. When the complainant presented the said cheque with his bankers on 26.05.2006, it was returned for the reason of "insufficient funds" on 27.05.2006. The complainant sent a legal notice to the accused on 02.06.2006 to the two addresses of accused. One of the notice was returned with endorsement "intimation delivered" and other notice was returned with endorsement "left". Hence, the complainant had filed a complaint against the accused for an offence under Section 138 of Negotiable Instruments Act before the XIII Metropolitan Magistrate, Egmore, Chennai.

3. On being questioned, the accused denied he was guilty and hence trial was conducted. On the complainant's side, the power of attorney holder of the complainant was examined as P.W.1 and 7 documents were marked as Ex.P1 to P7 viz., Ex.P1-power of attorney, Ex.P2-copy of legal notice, Ex.P3-cheque for Rs.61,000/-, Ex.P4-return memo, Ex.P5-copy of legal notice and Exs.P6 and P7, returned cover. On the side of the accused, no witness, no documents.

4. P.W.1 in his proof affidavit, had adduced evidence which is corroborative with the statements made in the complaint and in support of his evidence, he had marked documents listed as Exs.P1 to P7.

5. It had been contended on the side of the accused that the ink used in the signature in the cheque differs from the ink used in the other writings viz., amount and date in the cheque. Further, the learned Magistrate opined that just because the interest to be paid is Rs.6,600/- and the principal and interest come to Rs.61,600/- the execution of cheque for Rs.61,000/- alone does not discredit the complainant's case because even if the cheque is signed leaving blank all the other particulars and handed over to the payee authorising him to fill it up, it is valid. It was also contended on the side of the accused that the cheque was given for Rs.1,000/- and it has been written as Rs.61,000/- by the complainant. The

learned Magistrate was not inclined to accept this contention as the accused had executed a promissory note in favour of the complainant on 20.08.2005 for Rs.55,000/- and that he had issued the said cheque in order to discharge the principal and interest on the said amount. Hence, the learned Magistrate on scrutiny of the oral and documentary evidence found the accused guilty of offence under Section 138 of Negotiable Instruments Act and sentenced the accused to undergo simple imprisonment for six months and directed the accused to pay compensation of a sum of Rs.61,000/- to the complainant under Section 357 of Cr.P.C.

6. Aggrieved by the conviction and sentence imposed by the trial Court, the accused has preferred an appeal in C.A.No.218 of 2008, before the learned I Additional Judge, City Civil Court, Chennai. During the pendency of the appeal, the appellant / accused has filed a petition in Crl.M.P.No.1553 of 2009 under Section 45 and 91 of Evidence Act and an affidavit, to send the cheque No.576178 dated 20.01.2006 to Forensic Lab to find out the alterations and additions and for expert opinion about the signature and the words "Sixty Thousand only" and to file report. It was submitted in the affidavit that the petitioner had received Rs.10,000/- from his wife's sister's husband Dayalan and that the said Dayalan had obtained eight cheques of Canara Bank bearing nos.576172 to 576189, without filling up the drawee name. It was submitted that the first cheque was encashed by the respondent / complainant and the second, third and fourth cheques were in the name of A.S.Mani, who is a total stranger to him and the fifth cheque by the respondent. It was submitted that the respondent had forged his cheque given for an amount of Rs.1,000/- into Rs.61,000/- by inserting the 6 prior to Rs.1,000/- and also the words Sixty Prior to one Thousand and had fraudulently tried to encash it. It was also submitted that after the cheque was returned, legal notice was also not served on him thus preventing him from raising these points in detail. It was prayed to the Court to send the cheque No.576178, dated 20.01.2006 to the Forensic Science Laboratory to find out the alterations and additions and for expert opinion regarding the signature and the words and to file a report.

7. The respondent / complainant in his counter had submitted that the learned trial judge after considering all the objection and defense raised by the petitioner /

appellant and on accepting the genuineness of the exhibit cheque marked as Ex.P2 had given a finding on merits. It was submitted that the present petition was filed within an ulterior motive and intention to drag on the proceedings. It was prayed to set-aside the petition.

8. When the matter came up for hearing on 12.03.2010, the learned I Additional Sessions Judge, City Civil Court, Chennai, after hearing the averments advanced by both sides and on perusal of averments made in the petition and contentions raised in the counter, opined that the petitioner had filed the present petition only during the pendency of the present appeal and had not filed any petition for seeking the same relief before the trial Court at the time of trial. Hence, the learned judge on opining that though the petitioner had filed the petition belatedly, he has to be given an opportunity to defend the case, allowed the petition. The learned judge ordered that the cheque No.576178 should be sent to Forensic Lab to find out whether alteration and additions about the signature and words "Sixty Thousand only" and to file a report.

9. Aggrieved by the order passed by the I Additional Judge, City Civil Court, Chennai, the respondent / complainant had preferred the present revision.

10. It was contended that the appellate Court failed to see that the learned trial judge has negated the defense of the accused and given judicial finding on Ex.P3 as a genuine document and as such in the appeal stage, the Ex.P3 cannot be sent to Forensic Department. It was pointed out that the appellate Court ought to have held that the petition was filed only with intention to drag on the proceedings and that the matter was not raised by the accused in his 313 questioning before the trial Court. It was also contended that the appellate Court ought to have held the petition to send Ex.P3 (Cheque) for Forensic Analysis as unwarranted and unsustainable in law as the debt and liability under Ex.P2 is not disputed or denied.

11. The learned counsel for the accused submitted that even on visual scrutiny of cheque it is seen that the number "6" had been added in front of the number of "1,000". The learned counsel further submitted that to determine the veracity and genuineness of the cheque, it has to be sent to an expert in the Forensic Science

Department to get an opinion and that if this is done, no one would be prejudiced.

12. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the impugned order passed in the supplementary application filed by the accused and on perusing the conviction and sentence passed by the learned Magistrate, this Court is of the considered view that the original complaint has been filed before the XIII Metropolitan Magistrate, Egmore, Chennai in the year 2006. The C.M.P. in A.S.No.218 of 2008 has been filed on 15.02.2009. Therefore, after a delay of about three years, the application has been filed and that also was done after the complainant had obtained favourable order from the trial Court. As per the trial Court order, the accused has to pay Rs.61,000/- as compensation and he has to undergo six months simple imprisonment. Therefore, this Court directs the respondent herein / accused to partly comply with the impugned judgment of the trial Court by way of depositing a sum of Rs.20,000/- (Rupees Twenty Thousand only) into the credit of C.C.No.6332 of 2006, on the file of XIII Metropolitan Magistrate, Egmore, Chennai, without prejudice, within a period of one month. Only then, the impugned order passed in CrI.M.P.No.1553 of 2009 would be operated, failing which this Court order would automatically be vacated without any further reference and the appellate Court shall dispose the appeal on merits.

13. Resultantly, the above revision has been disposed of with the above modifications. Consequently, the order passed in CrI.M.P.No.1553 of 2009 in C.A.No.218 of 2008, on the file of learned I Additional Judge, City Civil Court, Chennai, dated 12.03.2010 is modified. Consequently, connected miscellaneous petition is closed. Accordingly ordered.

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