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Court : Chennai

Decided On : Oct-19-2012

Reported in : 2013(1)MLJ(Crl)565

Judge : C.S. Karnan

Appeal No. : Crl. R.C. No. 291 of 2006

Appellant : A. Umar and Another

Respondent : Vathiyar Finance, Rep. by Its Managing Partner, K.R. Rangasamy

Advocate for Pet/Ap. : For the Petitioners: C. Deivasigamani, Advocate. For the Respondent: S. Senthil Kumar, Advocatae.

Judgement :

(Prayer: Criminal Revision is filed under Sections 397 and 401 of Cr.P.C., to call for the records and set-aside the order of dismissal of C.M.P.No.6500 of 2005 in C.C.No.390 of 2000, passed by the Judicial Magistrate-VI, Coimbatore, dated 23.02.2006.)

1. The revision petitioner / petitioner / accused has preferred the present revision in Crl.R.C.No.291 of 2005 against the order passed in C.M.P.No.6500 of 2005 in C.C.No.390 of 2000, on the file of the Judicial Magistrate-VI, Coimbatore, dated

23.02.2006.

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

The complainant is a registered finance company. The first accused, being the Proprietor of the second accused firm, had borrowed a sum of Rs.2,50,000/- from the complainant, for his business purpose, on 29.06.1997, and executed a promissory note agreeing to pay the said sum with interest at the rate of 24% per annum. In order to discharge the part payment of the said debt, the first accused had issued a cheque dated 12.01.2000, for a sum of Rs.3,50,000/-, on behalf of the second accused firm, drawn on Corporation Bank, Oppanakkara Street, Coimbatore-1 to and in favour of the complainant. When the complainant presented the said cheque for encashment with his bankers, viz., Indian Overseas Bank, Thondamuthur Branch, on 21.01.2000, it was returned with an endorsement of "insufficient funds". The complainant sent a lawyer's notice to the accused on 04.02.2000, which was received by the accused on 05.02.2000. The accused sent a reply notice dated 14.02.2000 making false allegations. The complainant sent a rejoinder notice. As the accused failed to effect payment of cheque, even after receipt of legal notice, the complainant had filed a complaint under Section 138 of Negotiable Instruments Act before the Judicial Magistrate-VI, Coimbatore.

3. The complaint was taken on the file of Judicial Magistrate-VI, Coimbatore as C.C.No.390 of 2000. During the case proceedings, the accused had filed a petition in C.M.P.No.6500 of 2005 in C.C.No.390 of 2000 under Section 91 of Cr.P.C., calling for income tax returns and the book of accounts of the respondent / complainant. It was submitted that as far as the offence under Negotiable Instruments Act is concerned, the accused should be allowed to rebut the presumptions arising out of the cheque issued, as contemplated under Section 118 of the Act and to prove the same by one of rebuttal, the above said documents are very essential to prove his case that there was no passing of consideration as to the transactions that took place in the year 1997, and that the alleged cheque was issued on 12.01.2000. In support of his contentions, he had marked a ruling reported in 2002 DCR 231 of the High Court, wherein, the High Court had observed that the accused had got the right to prove his case and

hence, may require the accounts in possession of the complainant and had allowed the revision.

4. The respondent / complainant in his counter had stated that the petition was filed only to delay the proceedings and that the case has been pending for more than five years. It was submitted that no such documents are available with this complainant as the original complainant, Rangasamy, who has given evidence in this case on 04.04.2002 has already demised and this complainant has got into the shoes as representative of the complainant firm. It was submitted that the present complainant was also examined on 04.10.2003.

5. When the case was taken for final hearing on 23.02.2006, the learned Judicial Magistrate-VI, Coimbatore, after perusing the records and documents and after hearing the arguments of both sides, observed that the case was instituted in the year 2000 and the complaint was made by one Rangasamy representing the complainant's firm, viz., Vaathiyar Finance and the P.W.1 was examined in chief on 04.04.2002. Subsequently, two more additional witnesses were also examined on the part of the complainant and the case was posted for examination of the accused under Section 313(1)(b) of Cr.P.C, on 15.09.2003 from which date the case has been posted and called for examination of defence witnesses. Subsequently, on 02.01.2004, P.W.1 the original complainant viz., Rangasamy was cross-examined by the accused's counsel and the accused himself had been examined on 22.03.2004 and the present substituted complainant was examined on 04.10.2005 and the present petition was filed on 01.12.2005. The learned Magistrate opined that if at all the petitioner / accused intended to rebut the presumptions and really needed the account books or the income tax returns, he should have immediately filed this petition soon after questioning under Section 313(1)(b) of Cr.P.C. on 15.09.2003 or at least when P.W.1 was cross-examined on 02.01.2004 or when the petitioner / accused himself was examined on 22.03.2004 as D.W.1 or when the new substituted complainant was examined on 04.10.2005. Hence, the learned Magistrate, on observing that the present petition was filed only on 01.12.2005 and on observing that after the examination of the substituted complainant, the case came for hearing on six different occasions and that the petition was not filed during that period opined that the act of the petitioner was to

prevent the other side from getting such notice and that the complainant would be aware of such petition only after the case was called on 08.12.2005. As such, the learned Magistrate opined that the petition was filed belatedly and that no proper reasons had been placed before the Court for the delay in filing such a petition. The learned Magistrate observed that there was a period of 2 years from the date of examination of the accused under Section 313(1)(b) of Cr.P.C. and the demise of the original complainant, who has now been substituted by the present representative, Kavegowder, who is not in possession of those documents. Hence, the learned Magistrate on observing that the present petition has been filed only to drag on the proceedings and holding that the intentions of the petitioner / accused is not a bona fide one and on observing that no proper reason has been placed, before the Court, for filing the petition belatedly after examination of accused under Section 313 (1) (b) of Cr.P.C . on 15.09.2003, held that the petition does not have any merits and dismissed the petition.

6. Aggrieved by the dismissal of his petition, the petitioner / accused has preferred the present revision.

7. The learned counsel for the revision petitioner has contended that the lower Court failed to note that invoking Section 91 of Cr.P.C. is to get relevant records viz., account book used in the daily transaction of a registered finance firm and the income-tax returns of the year of money transaction, which are in the exclusive possession and control of the other side, the respondent herein. It was pointed out that the lower Court failed to note that the petition under Section 91 of Cr.P.C can be filed by the aggrieved at any stage of trial or inquiry and there is no time frame fixed under law. It was pointed out that the lower Court failed to note that by dismissing the petition under Section 91 of Cr.P.C., the revision petitioner herein has been deprived of the right to defend himself. It was pointed out that the lower Court failed to note that the delay in disposing the case is not at the behest of the revision petitioner.

8. The learned counsel for the revision petitioner further submitted that if the complainant produces the account books of the finance company during the relevant period from 31.03.1997 to 29.06.1997 and income tax returns from

01.04.1997 to 31.03.1998, only then the learned Magistrate can decide the main case on merits. If both the said documents were produced before the trial Court, the respondent / complainant would not be prejudiced and only then the learned trial judge could give quality judgment.

9. The learned counsel for the complainant submitted that the case has been registered under Section 138 of Negotiable Instruments Act. In order to prove the same, the complainant had marked nine documents. In the instant case, only limited issues have arisen for which the account books and income tax returns are not necessary to decide the case. The petitioner / accused is a third party / stranger and does not have any locus standi to demand the said documents for this case.

10. On verifying the factual position of the case and on arguments advanced by the learned counsels on either side and on perusing the impugned order of the learned Magistrate, this Court does not find any discrepancy in the said order. Hence, the revision has to be dismissed. Accordingly, it is dismissed. Originally, the complaint had been filed in the year 2000. Therefore, speedy trial is absolutely necessary. Hence, this Court directs the learned Magistrate to dispose the main case on the most urgent basis.

11. Resultantly, the above revision is dismissed. Consequently, the order passed in C.M.P.No.6500 of 2005 in C.C.No.390 of 2000, on the file of Judicial Magistrate-VI, Coimbatore, dated 23.02.2006 is confirmed. Accordingly ordered.

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