
(2009) 08 MAD CK 0276

In the Madras High Court

Case No : Criminal O.P. No"s. 30991 and 30994 of 2006

Gomathi and S. Uma Mageswaran

APPELLANT

Vs

Lakshmi Saraswathi Finances and Saraswathi Muthu
Proprietor M.S. and Co.

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2009) 08 MAD CK 0276

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Advocate : I.C. Vasudevan, for the Appellant; V. Bharathidasan, for the Respondent

Final Decision : Dismissed

Judgement

Aruna Jagadeesan, J.—These Criminal Original Petitions are filed to call for the records pertaining to the order dated 20.11.2006 made in CrI.M.P. No. 4616 of 2006 in C.C. No. 289 of 2004 and CrI.M.P. No. 4615 of 2006 in C.C. No. 354 of 2002 respectively on the file of the Judicial Magistrate No. II, Erode and to set aside the same.

2. The brief facts of the case is as follows:

The respondent had filed private complaint in C.C. No. 289 of 2004 and C.C. No. 354 of 2002 on the file of the Judicial Magistrate No. II, Erode against the petitioners, alleging that two cheques for a sum of Rs. 1,00,000/- and Rs. 50,000/- were returned unpaid on presentation for collection and in spite of issuance of statutory notice, they have failed to repay the said amount even after receipt of the legal notice. The defence is that there was no transaction between the petitioners and the respondent after the year 1998 and blank cheques were issued as security for the amount borrowed by the petitioners on pronotes in the year 1995 and the petitioners paid interest only upto 1998. So, according to

them, the allegation that the cheques were issued by the petitioners on 09.08.2002 is false. They would further contend that even if it is assumed that the cheques were issued on 09.08.2002, it could be only to discharge to time barred debt, which was not a legally enforceable debt and hence, the provisions of Section 138 of the Negotiable Instruments Act does not attract.

According to the petitioners that the respondent/PW-1 has admitted in his cross-examination that there was no transaction after the year 1998 and in order to fill up the lacuna, when the case was posted for arguments, the respondent has filed the petition to recall PW-1 to mark some of the receipts alleged to have been issued by the respondent for payments made by the petitioners. It is submitted that inspite of their objection, the learned Magistrate has allowed the petition and the same is challenged before this Court

3. Mr. I.C. Vasudevan, learned Counsel appearing for the petitioners would contend that Section 311 of the Code of Criminal Procedure cannot be invoked to fill up the lacuna in the complainant's case at the fag end of the trial and failing to produce those documents at the time when the respondent let in evidence would lead to an inference that those documents are a forged one. He would submit that the learned Magistrate has allowed the petition without considering whether those documents are relevant or not to decide the case without considering the admission made by the respondent that there was no transaction after the year 1998. In support of his contention, he has placed reliance on the decision of this Court in the case of Danday Knit Garments and Another Vs. Subiksha Spinners (P.) Ltd., wherein, it is held that failure of prosecution to conduct the case with care cannot be a ground to rectify such laches by recourse to Section 311 of the Code of the Criminal Procedure, as it would cause prejudice to the accused.

4. Mr. V. Bharathidasan, learned Counsel appearing for the respondent would justify the order passed by the learned Magistrate on the ground that to find out the truth and arrive at a just decision in this case as to whether the receipts issued by the respondent relates to the period as found thereto and if so, whether it would save the limitation in filing the complaints before the Court. He had placed reliance on the decision of the Hon''ble Supreme Court in the case P. Chhaganlal Daga Vs. M. Sanjay Shaw, .

5. It is held in the decision cited supra that Section 311 of the Code of Criminal Procedure could be exercised even if evidence on both sides is closed and such jurisdiction of the Court is dictated by the exigency of the situation and fairplay. It is held that the only factor which should govern the Court in exercise of powers u/s 311 of the Code of Criminal Procedure should be whether such material is essential for the just decision of the case. By making a reference to its decision reported in Ram Chander Vs. State of Haryana, , it is further held that the Parliament has studded the said provision lavishly with the word "any" at different places which would indicate the widest range of power conferred on the Court in that matter.

6. In yet another decision of the Hon"ble Supreme Court in the case U.T. of Dadra and Haveli and Anr. v. Fatesinh Mohansinh Chauhan reported in 2006 3 SCC CrI. 300, it is held that lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case and the advantage of it normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. It is held that no party in a trial can be foreclosed from correcting errors and if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified. It observed that after all, function of the criminal Court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.

7. Bearing in mind the above said dictum stated supra it has to be seen whether the order passed by the learned Magistrate is in the interest of justice and for just decision of the case. From the evidence adduced in this case, it could be seen that the respondent as PW-1 has answered in the affirmative when his attention was drawn to a question that there was no cash transaction from the period 1998. In order to show later transaction, the respondent has sought to mark the account books in order to prove that the petitioners have paid a sum of Rs. 1000/- on 20.09.2001 and a receipt had been issued by the respondent evidencing such payment . In order to establish his case that there was money transaction even after the year 1998, the respondent seeks to mark the account books which is said to have been maintained in the ordinary and regular course of business. On being satisfied with the justification of the plea made by the respondent, the learned Magistrate has opined that in order to find out the truth the account books are necessary and has allowed the petition. It is for the learned Magistrate as a trial Judge to decide whether for just and fair decision of the case, such evidence is necessary and could be permitted to be marked as a material evidence on the side of the respondent. In such circumstances, no exception can be taken to the course adopted by him.

8. It is pertinent to point that the first part of Section 311 of the Code of Criminal Procedure is discretionary and the second part is mandatory and compels the Court to exercise its jurisdiction if the new evidence appears to be essential to a just decision of the case. Once, the learned Magistrate is satisfied and that certain evidence is essential for just decision, he is bound to bring that on record. As the order of the learned Magistrate indicates that he has exercised his discretion only with the object of finding out the truth and for obtaining proper proof of facts to lead to a just and correct decision, I do not find any illegality or infirmity in the order passed by the learned Magistrate. Therefore, the submissions made by the learned Counsel for the petitioners that the power was exercised by the learned Magistrate to fill up the lacuna in the prosecution case cannot be accepted unless it is shown that such exercise of power causes serious prejudice to the petitioner resulting in miscarriage of justice.

9. In such view of the matter, I hold that the order passed by the learned Magistrate is in the interest of justice and does not warrant inference by this Court. In the result, the Criminal Original Petitions stand dismissed. Consequently, connected miscellaneous petitions are dismissed.