
P. Premavathi Vs P. Selvam

Criminal Revision Petition (MD) No. 20 of 2009

Court: Madras High Court

Date of Decision: Jan. 11, 2010

Acts Referred:

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

Citation: (2011) 4 RCR(Criminal) 612

Hon'ble Judges: T. Sudanthiram, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T. Sudanthiram, J.

This Criminal Revision Petition is filed to set aside the impugned order, dated 22.01.2009 passed in Cr.M.P. No. 430

of 2009 in S.T.C. No. 475 of 2004, on the file of the learned Judicial Magistrate No. III, Madurai.

2. The revision petitioner herein is an accused in S.T.C. No. 475 of 2004 on the file of the Judicial Magistrate No. III, Madurai, facing charge for

an offence u/s 138 of the Negotiable Instruments Act on the basis of the private complaint filed by the respondent herein. The respondent herein

filed an application u/s 311 Cr.P.C. to recall P.W.1 and to examine him further and also to mark the pro-note executed by the accused on

20.03.2001. The said application was allowed by the learned Judicial Magistrate No. III, Madurai. Aggrieved by the order of the learned Judicial

Magistrate No. III, Madurai, the petitioner herein has preferred this Criminal Revision Petition.

3. The learned counsel for the petitioner would submit that though the case was filed in the year 2004 by the complainant, for almost 5 years, the

complainant had not chosen to file a pro-note, but only after the examination of the witnesses was over and at the stage of arguments, after filing

the written argument by the accused only the complainant has chosen to file an application u/s 311 Cr.P.C. to recall P.W.1, in order to fill up the

lacuna in the case of the complainant on 15.09.2009.

4. This Court considered the submissions made by the learned counsel for the petitioner and perused the records.

5. It is the case of the respondent/complainant herein that the accused executed a pro-note on 20.03.2001, in favour of the complainant, promising

to repay the amount with interest at the rate of 24% per annum. The accused also issued a cheque, dated 20.11.2002 to discharge her liabilities

and the cheque when presented for encasement, the same was dishonoured. Therefore, the complaint was filed against the accused. It appears that

the complainant was cross-examined by the defence and the pro-note executed by the accused was not produced deliberately and the accused

also denied her liability.

6. This Court is of the opinion that though initially presumption is available in favour of the complainant regarding the liability of the accused, once

the accused has denied her liability rebutting the presumption and makes an attempt to discharge her burden, then the burden is shifted to the

complainant to prove the liability of the accused. Therefore, it is not necessary for the complainant to mark the pro-note even at the initial stage, but

once the liability is denied by the accused, in support of the case of the complainant, the complainant is entitled to mark pro-note subsequently. Of

course, in this case, it appears that the trial has come to a final stage and only at that time, the complainant has chosen to file a petition u/s 311

Cr.P.C. burden being shifted on the complainant to prove the liability.

7. In a case of fair trial fullest opportunity must be given both to the complainant as well as to the accused, but it should not be in such a way to fill

up the lacuna of the prosecution case. In a case u/s 138 of the Negotiable Instruments Act after the accused rebutting the presumption regarding

the liability, by giving an opportunity to the complainant to prove the liability on the part of the accused cannot be termed as filling up lacuna in the

case of the complainant.

8. This Court is of the considered view that the order passed by the learned Judicial Magistrate No. III, Madurai in Cr.M.P.No. 430 of 2009 in

S.T.C. No. 475 of 2004, dated 22.01.2009 does not suffer from any infirmity and no interference is required by this Court.

9. In the result, this Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed.