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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.07.2023

Coram:

The Hon'ble Mrs.Justice R.HEMALATHA

**Crl.R.C.No.1220 of 2023
and Crl.M.P.Nos.9546 & 9547 of 2023**

R.Sivakumar

...Petitioner

Versus

Selvam

...Respondent

This Criminal Revision Case is filed under Sections 397 r/w. 401 of Cr.P.C. praying to call for the records pertaining to the judgment passed in C.A.No.31 of 2014 on the file of the Additional District Sessions Judge, Nagapattinam dated 25.11.2019 confirming the conviction and sentence passed by the Judicial Magistrate, Sirkali vide judgment dated 19.06.2014 in S.T.C.No.1106 of 2012 and set aside the same.

For Petitioner : Mr.T.Venugopal

For Respondent : Mr.Om Sai Ram



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ORDER

This criminal revision has been filed by the revision petitioner/accused praying to set aside the judgment dated 25.11.2019 passed by the learned Additional District Sessions Judge, Mayiladuthurai in C.A.No.31 of 2014, confirming the conviction and sentence passed by the learned Judicial Magistrate, Sirkali vide judgment dated 19.06.2014 in S.T.C.No.1106 of 2012.

2. The respondent/complainant filed a private complaint under Section 200 of Cr.P.C against the petitioner/accused for the offence punishable under Section 138 of Negotiable Instruments Act (hereinafter referred to as 'Act') in S.T.C.No.1106 of 2012 before the learned Judicial Magistrate, Sirkali.

3. The case of the respondent/complainant in a nutshell is as follows:

The respondent/complainant and the petitioner/accused are close friends. On 16.07.2012, the petitioner/accused borrowed a sum of Rs.4,30,000/- from the respondent/complainant. While borrowing the said



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amount, the petitioner/accused promised the respondent/complainant that he would repay the borrowed amount within 10 days. In order to discharge his liability, the petitioner/accused issued a Cheque bearing No.213153 dated 23.07.2012 (Ex.P1) drawn on ICICI Bank, to the respondent/complainant. When the respondent/complainant presented the Cheque for collection through his banker viz., ICICI Bank, Kollidam Branch on 27.07.2012, the same was returned for the reason, "Account Closed". Thereafter, the respondent/complainant issued a Statutory Notice dated 18.08.2012 (Ex.P5) to the petitioner/accused and the same was received by the petitioner/accused which is evident from the Postal Acknowledgment Card (Ex.P3). However, the petitioner/accused did not come forward to make good the payment and also, he did not send any reply. Therefore, the respondent/complainant filed a private complaint against the petitioner/accused, before the learned Judicial Magistrate, Sirkali in S.T.C.No.1106 of 2012.

3.1. On receipt of the said complaint, the learned Judicial Magistrate, Sirkali took cognizance of the offence and issued summons to the petitioner/accused. After the receipt of summons, the petitioner/accused



appeared before the learned Judicial Magistrate, Sirkali and he was furnished with the copies of records under Section 207 of Cr.P.C. Thereafter, when the petitioner/accused was questioned with regard to the substance of accusation made in the complaint against him, he pleaded not guilty and therefore, the case was posted for trial.

3.2. During trial, the respondent/complainant examined himself as P.W.1 and he marked 5 documents as Ex.P1 to Ex.P5. When the petitioner/accused was questioned under Section 313 of Cr.P.C, he denied of having committed any offence and he did not examine any witness on his side. However, he marked 4 documents as Ex.R1 to Ex.R4.

3.3. After analyzing the oral and documentary evidence adduced on both sides, the learned Judicial Magistrate, Sirkali found the petitioner/accused guilty of offence under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for a period of 6 months and also, directed him to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of 1 month. Further, the learned Judicial



Magistrate, Sirkali directed the petitioner/accused to repay the Cheque amount of Rs.4,30,000/- as compensation to the respondent/complainant, within a period of six months from the date of judgment.

3.4. Aggrieved over the judgment passed by the learned Judicial Magistrate, Sirkali, the petitioner/accused preferred an appeal in C.A.No.31 of 2014 before the learned Additional District & Sessions Judge, Nagapattinam. The said appeal was transferred to the file of learned Additional District Sessions Judge, Mayiladuthurai. After the transfer of appeal, the petitioner/accused did not appear before the learned Additional District Sessions Judge, Mayiladuthurai. On 25.11.2019, the learned Additional District Sessions Judge, Mayiladuthurai dismissed the said appeal. Hence, the petitioner/accused has filed the present criminal revision case before this Court for the relief stated *supra*.

4. Mr.T.Venugopal, learned counsel for the revision petitioner contended that during the year 2011, the petitioner/accused borrowed only a sum of Rs.1,00,000/- from the respondent/complainant, for which, the



petitioner/accused had executed a Registered Mortgage Deed dated 02.08.2011 in favour of the respondent/complainant and that he did not borrow a sum of Rs.4,30,000/- from the respondent/complainant. He also contended that after the appeal was transferred to the file of the learned Additional District Sessions Judge, Mayiladuthurai, the petitioner/accused was not served with notice of hearing of the appeal. Therefore, the petitioner/accused could not appear before the learned Additional District Sessions Judge, Mayiladuthurai.

4.1. The learned counsel for the accused/revision petitioner further drew the attention of this Court to the evidence of P.W.1, wherein, P.W.1 (respondent/complainant) had admitted that the petitioner/accused executed a Registered Mortgage Deed dated 02.08.2011 after obtaining a loan of Rs.1,00,000/- on 02.08.2011.

4.2. The specific contention of the learned counsel for the revision petitioner is that even according to the evidence of P.W.1, the petitioner/accused had borrowed only a sum of Rs.1,00,000/- on 02.08.2011



from the respondent/complainant and the said borrowed amount was not repaid by the petitioner/accused. Further, it is highly improbable for any person to lend a sum of Rs.4,30,000/- without obtaining any security from the borrower.

4.3. Further, the learned counsel contended that the petitioner/accused had issued the Cheque bearing No.213153 dated 23.07.2012 (Ex.P1) to the respondent/complainant as security for the loan obtained by him. While so, how the respondent/complainant had lent a sum of Rs.4,30,000/- to the petitioner/accused without getting any security remains unanswered.

5. *Per Contra*, Mr.Om Sai Ram, learned counsel appearing for the respondent contended that both the Courts below had concurrently held that the petitioner/accused is found guilty of the offence under Section 138 of the NI Act. He also contended that the petitioner/accused did not deny his signature on the Cheque bearing No.213153 dated 23.07.2012 (Ex.P1) and therefore, there is a presumption under Sections 118 & 139 of the NI Act unless the contrary is proved. Since the accused did not adduce any rebuttal



evidence, the conviction and sentence passed by both the Courts below cannot be found fault with.

6. It is true that the petitioner/accused had admitted his signature on the Cheque bearing No.213153 dated 23.07.2012 (Ex.P1). Moreover, the petitioner/accused did not send any reply to the Statutory Notice dated 18.08.2012 (Ex.P5) issued by the respondent/complainant. The contention of the petitioner/accused is that he borrowed only a sum of Rs.1,00,000/- as loan from the respondent/complainant on 02.08.2011 and for the said loan, he had executed a Registered Mortgage Deed dated 02.08.2011 in favour of the respondent/complainant which was also admitted by the respondent/complainant before the trial Court, during the course of examination.

7. The contention of the respondent/complainant is that the loan obtained by the petitioner/accused on 02.08.2011 is altogether a different transaction.

8. It is pertinent to point out that the petitioner/accused did not



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adduce any oral or documentary evidence to substantiate his following contentions:

(i) He had borrowed only a sum of Rs.1,00,000/- from the respondent/complainant on 02.08.2011.

(ii) He handed over a blank Cheque bearing No.213153 dated 23.07.2012 (Ex.P1) to the respondent/complainant subsequent to the execution of the Mortgage Deed dated 02.08.2011.

(iii) He did not borrow a sum of Rs.4,30,000/- from the respondent/complainant.

So, it cannot be concluded that the petitioner/accused had borrowed only a sum of Rs.1,00,000/- from the respondent/complainant and subsequently, he did not borrow any other amount from the respondent/complainant.

9. In the instant case, the petitioner/accused has not questioned the financial capacity of the respondent/complainant to lend a sum of Rs.4,30,000/- and it is evident from the line of cross examination.



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10. The first Appellate Court after the appeal was transferred to the file of the learned Additional District Sessions Judge, Mayiladuthurai, issued notice to the revision petitioner/accused to appear for the hearings on 25.09.2019 & 16.10.2019. However, the petitioner/accused did not appear before the First Appellate Court on the said dates. Therefore, on the basis of the materials available on record, the learned Additional District Sessions Judge, Mayiladuthurai passed the judgment dated 25.11.2019 confirming the judgment of the trial Court. In this regard, it is relevant to extract Section 386 of Cr.P.C hereunder:

“386. Powers of the Appellate Court.—After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may — ”

Therefore, the First Appellate Court was perfectly right in proceeding with the appeal in the absence of petitioner/accused or his counsel.



11. In fact, only after analyzing the oral and documentary evidence, both the Courts below have passed the judgment. I do not find any infirmity in the judgment passed by the trial Court as well as the Appellate Court.

12. In the result, this criminal revision case is dismissed and the judgment dated 25.11.2019 passed by the learned Additional District Sessions Judge, Mayiladuthurai in C.A.No.31 of 2014 as well as the judgment dated 19.06.2014 passed by the learned Judicial Magistrate, Sirkali in S.T.C.No.1106 of 2012 are hereby confirmed. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No

Speaking Order (or) Non-Speaking Order



To
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- 1.The Additional District Sessions Judge,
Nagapattinam.
- 2.The Judicial Magistrate,
Sirkali.
- 3.The Public Prosecutor,
High Court, Madras.



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R.HEMALATHA, J.

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