



Crl.R.C.No.1246 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.1246 of 2019

T.Chinnaraju

... Petitioner

Vs.

Durai Raj

... Respondent

Prayer : Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code 1973 to set aside the judgment and orders dated 03.10.2019 passed in Crl.A.No.21/2018 by the Additional District and Sessions Judge, Dharmapuri, confirming the judgement and orders dated 28.02.2012 passed in S.T.C.No.90/2011 by the Judicial Magistrate, Fast Track Court at Magisterial Level, Dharmapuri.

3For Petitioner : Mr.P.Kannan Kumar
for Mr.N.Palanikumar

For Respondent : No appearance



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ORDER

Challenging the order of acquittal dated 03.10.2019 passed by the learned Additional District and Sessions Judge, Dharmapuri in Crl.A.No.21/2018 confirming the judgment dated 28.02.2012 passed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Dharmapuri in S.T.C.No.90/2011, the present criminal revision case is filed.

2. For the sake of convenience the parties are referred to as per their ranking in the trial court and at appropriate places, their ranks in the present revision case would also be indicated, if necessary.

3. The brief case of the revision petitioner / complainant in a nutshell is as follows :

3.1. The respondent / accused borrowed a sum of Rs.5,00,000/- from the revision petitioner / complainant on 05.12.2008 for developing his business and in order to liquidate the said amount issued a cheque (Ex.P1) bearing number 752876 dated 05.12.2008 drawn on Syndicate



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Bank, Eriyur Branch in favour of the complainant.

3.2. When the complainant presented the said cheque for collection on 22.01.2009 through his bankers, viz., TAICO Bank, Dharmapuri Branch, the same was returned for the reason 'Funds Insufficient' as is seen from the cheque Return Memo dated 22.01.2009 (Ex.P2).

3.3. Thereafter, the complainant issued a statutory notice dated 30.01.2009 (Ex.P3) to the accused calling upon him to make good the payment within 15 days from the date of receipt of the notice.

3.4. Though the accused received the said statutory notice as is evidenced by the postal acknowledgement card (Ex.P4), he did not come forward to make good the payment and did not also send any reply.



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3.5. Therefore, the revision petitioner/complainant filed a private complaint before the Judicial Magistrate No.I, Dharmapuri under Section 200 Cr.P.C. against the respondent/accused for the offence punishable under Section 138 of the Negotiable Instruments Act (N.I. Act) in S.T.C.No.289/2009 which was subsequently transferred to the Judicial Magistrate, Fast Track Court at Magisterial Level, Dharmapuri and renumbered as S.T.C.No.90/2011.

3.6. The learned Judicial Magistrate, Fast Track Court at Magisterial Level, Dharmapuri took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. Act) and issued summons to the accused under Section 204 Cr.P.C.

3.7. On the appearance of the accused, the copies of records were furnished to him under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since the accused pleaded not guilty, the case was posted for trial.



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3.8. On the side of the complainant, the complainant examined himself and marked Ex.P1 to Ex.P5.

3.9. When the accused was questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. However, he did not adduce any evidence on his side.

3.10. After full trial, the learned trial court judge, found the accused not guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and acquitted him under Section 255(1) Cr.P.C. vide his judgment and orders dated 28.02.2012.

3.11. Aggrieved over the same, the complainant filed an appeal in Crl.A.No.21/2018 before the Additional District and Sessions Court, Dharmapuri. The learned Additional District and Sessions Court, Dharmapuri after analysing the evidence on record, confirmed the findings recorded by the trial court and dismissed the appeal, as against



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which the present criminal revision case is filed by the complainant.

4. Heard Mr.P.Kannan Kumar, learned counsel for the revision petitioner. No representation for the respondent.

5. Mr.P.Kannan Kumar, learned counsel for the revision petitioner would contend that there were two transactions between the complainant and the accused, and that the accused borrowed a sum of Rs.19,00,000/- from the complainant and issued two cheques one for a sum of Rs.14,00,000/- and another for a sum of Rs.5,00,000/-. His further contention is that subsequent to the issuance of the statutory notice, the accused paid a sum of Rs.5,00,000/- and this amount is only for the cheque bearing number 752874 for a sum of Rs.14,00,000/-. According to him, the complainant had in fact returned the said cheque after receiving full payment of Rs.14,00,000/- from the accused. His specific contention is that both the courts below had not taken this aspect into consideration while acquitting the accused and therefore prayed for setting aside the judgment and orders passed by both the courts below.



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6. At the outset it may be observed that the complainant in his complaint had specifically stated that the accused borrowed only a sum of Rs.5,00,000/- from him on 05.12.2008. He also issued the statutory notice (Ex.P3) requesting the accused to pay the said amount within a period of 15 days. The accused had in fact received the statutory notice on 31.01.2009 as is evidenced from the Postal Acknowledgement Card (Ex.P4). Thereafter, the accused had paid a sum of Rs.5,00,000/- by way of demand draft on 10.02.2009. The accused therefore contended that there was no subsisting debt on the date of presentation of the private complaint by the complainant.

7. It is seen from the records that the complainant had not specifically mentioned either in his complaint or in his statutory notice that the accused borrowed a sum of Rs.19,00,000/- and issued two cheques one bearing number 752874 dated 20.11.2008 for a sum of Rs.14,00,000/- and another bearing number 752876 dated 05.12.2008 for a sum of Rs.5,00,000/- drawn on Syndicate Bank, Eriyur Branch. During the course of cross examination the complainant (P.W.1) had deposed as



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follows :

“இவ்வழக்கு காசோலை எனக்கு 05.12.2008ல் கொடுக்கப்பட்டது. அதே தேதியில் எதிரியின் வாங்கிக் கணக்கிலிருந்து என்னுடைய வாங்கிக் கணக்கிற்கு ரூ.9 லட்சம் கொடுக்கப்பட்டுள்ளது என்றால் சரிதான். நான் சட்ட அறிவிப்பு அனுப்பிய பின்னர் எதிரி என் பெயருக்கு ரூ.5 லட்சத்திற்கு வரைவோலை எடுத்து அனுப்பியுள்ளார் என்றால் சரிதான். வரைவோலை 10.02.2009ம் தேதி எடுத்து எனக்கு அனுப்பப்பட்டுள்ளது. அதனை மறுநாள் 11.02.2009ம் தேதி எனது கணக்கில் டெபாசிட் செய்துவிட்டேன். ம.சா.ஆ.3 சட்ட அறிவிப்பில் எதிரி எனக்கு ரூ.5 லட்சத்தைத் தவிர வேறு தொகை ஏதேனும் தர வேண்டியுள்ளதாக சொல்லியுள்ளேனா என்றால் இல்லை.”

The complainant had in fact encashed the demand draft on 11.02.2009 and the private complaint under Section 200 Cr.P.C. was filed only on 17.02.2009. Though the learned counsel for the complainant had stated that the complainant had returned the cheque for a sum of Rs.14,00,000/- to the accused between the period 11.02.2009 and 17.02.2009, the complainant did not take steps to give a rejoinder to the accused stating that the payment of Rs.5,00,000/- was only for the cheque bearing number 752874 and not for the cheque (Ex.P1). He had not also



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elaborated this in his private complaint, especially when he has received a sum of Rs.5,00,000/- after the issuance of statutory notice (Ex.P3). In the circumstances, the order of acquittal passed by both the courts below cannot be termed as perverse. Therefore, the criminal revision case is dismissed as devoid of merits.

8. In the result,

- i. The Criminal Revision Case is dismissed.
- ii. The judgment dated 03.10.2019 passed in Crl.A.No.21/2018 by the Additional District and Sessions Judge, Dharmapuri and the judgement dated 28.02.2012 passed in S.T.C.No.90/2011 by the Judicial Magistrate, Fast Track Court at Magisterial Level, Dharmapuri, are confirmed.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

- 1.The Additional District and Sessions Judge, Dharmapuri.
- 2.The Judicial Magistrate, Fast Track Court at Magisterial Level, Dharmapuri.
- 3.The Section Officer, Criminal Section, Madras High Court, Chennai.

R. HEMALATHA, J.



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