



Crl.R.C.(MD).No.1272 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	20.12.2023
Pronounced On	:	19.03.2024

CORAM
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). No.1272 of 2022
and
Crl.M.P(MD). No.16057 of 2022

Ranathive

... Petitioner

Vs.

Prabakaran

... Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records of the Judgment passed in Crl.A.No.23 of 2019 before III Additional District & Sessions Court, Thanjavur @ Pattukottai dated 12.10.2022 confirming the judgment passed in S.T.C.No.45 of 2016 on the file of the Judicial Magistrate Court(FTC) Pattukottai dated 31.01.2019 and set aside the same.

For Petitioner : Mr.R.Vivekanandan

For Respondent : Mr.S.Ramsundarvijayraj



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ORDER

The revision petitioner, the accused in S.T.C.No.45 of 2016 has filed this petition to set aside the Judgment of the Appellate Court passed by the III Additional District & Sessions Court, Thanjavur @ Pattukottai, in C.A.No.23 of 2019, dated 12.10.2022 confirming the Judgment in in S.T.C.No.45 of 2016 dated 31.01.2019 on the file of the Judicial Magistrate Court (FTC), Pattukottai.

2.The petitioner and the respondent are close relatives. The petitioner approached the respondent on 10.02.2015, to arrange a sum of Rs.25,00,000/-. The respondent was not having such huge amount and, therefore, he arranged the said amount by borrowing a sum of Rs.25,00,000/- from various persons namely Gnanasekaran, Duraisamy, and Elanchezhian. Thereafter, the respondent paid the said amount to the petitioner on 12.12.2015. The petitioner received the amount with an undertaking to repay the amount within a month. It is the case of the respondent that the petitioner already handed over the sale deed dated 23.11.2011, in favour of the respondent's wife and the sale deed relating to the path way to the respondent. Thereafter, the petitioner issued a cheque dated 16.03.2015 to the respondent for the above said amount of Rs.25 lakhs. On 06.04.2015 the same was presented for collection and the same got dishonoured



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on 09.04.2015 as “Funds Insufficient”. Therefore, the respondent issued the statutory notice under Section 138 of Negotiable Instruments Act, on 21.04.2015. The petitioner received it on 22.04.2015 and he sent reply notice on 30.04.2015. In the reply, he denied the above said allegation of receipt of the amount. Thereafter, the petitioner filed a complaint under 138 of NI Act before the Judicial Magistrate Court (FTC), Pattukottai. The same was taken cognizance in S.T.C.No.45 of 2016. After taking cognizance, summons was issued to the petitioner. After the appearance of the petitioner, he denied borrowal of amount, during the questioning 251 of Cr.P.C., and he pleaded not guilty. He stood for trial.

3.To prove the case, the respondent examined four witnesses P.W.1 to P.W.4, including himself as P.W.1 and exhibited 6 documents as Ex.P.1 to Ex.P.6. The learned trial Judge thereafter questioned the accused under Section 313 Cr.P.C., by putting the incriminating evidence available from prosecution witnesses and documents against him and he denied the same as false and then, the case was posted for examination of the witnesses on the side of the accused. On the side of the accused, the accused examined himself as D.W.1 and exhibited 16 documents as Ex.D1 to Ex.D16.



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4.The learned trial Judge, on considering the oral and documentary evidence, convicted the petitioner for the offence under Section 138 of NI Act and sentenced him to undergo simple imprisonment for one year and to pay a Compensation of Rs.25,00,000/- to the complainant within a period of one month from the date of receipt of judgment dated 31.01.2019.

5.Aggrieved over the same, the petitioner filed the Criminal Appeal in C.A.No.23 of 2019 on the file of the III Additional District and Sessions Court, Thanjavur @ Pattukottai. The learned Appellate Judge also confirmed the same. Hence, the petitioner preferred this revision before this Court.

6.The learned counsel for the petitioner made the following submissions:

6.1.Both the Courts below failed to consider the contention of the petitioner properly that the respondent/complainant has no source of income to lend the huge amount of Rs.25,00,000/-. The Courts below failed to see that the petitioner never issued a cheque to the respondent/complainant and never borrowed any amount from him. To prove the same, he pleaded before the Court below that according to the respondent/complainant, the petitioner borrowed the said amount to purchase the pathway to his property and he handed over the



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original documents to them. The original documents were already entrusted with one Senthilkumar. One Padmavathi filed a suit in O.S.No.117 of 2014 against the petitioner for various reliefs. The said Padmavathi is the wife of the vendor of the petitioner's wife. There is conspiracy between Senthilkumar and padmavathi and said Senthilkumar used the unfilled cheque entrusted with him at the time of purchasing the property from the husband of the Padmavathi and the same was misused by the respondent herein and filed this false complaint. To prove the same, the petitioner produced number of documents namely Exs.D1 to D6 and also he himself examined as D.W.1. From the above material, his case was proved by the preponderance of probability. The cheque issued to the respondent is without "MICR" number and it is clearly proved that the cheque was old one which was entrusted with the said Senthilkumar and the same was subject matter of the criminal complaint made against Senthilkumar, which was marked as Ex.D16. The same was not properly considered. Both the Courts below failed to see that there was no explanation on the side of the respondent as to how the original document entrusted with the respondent was filed before the Civil Court in O.S.No.117 of 2014. Therefore, there is a conspiracy between all the above persons and false case was filed against the petitioner. The petitioner issued the reply notice and also substantiated his plea by examining himself and



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also gave a detailed explanation under Section 313 Cr.P.C. The same was not properly considered by the Court below. In the said circumstances, the presumption under Sections 138 and 139 of NI Act does not arise ie., the foundational fact has not been proved by the respondent and hence, presumption under Section 139 of NI Act was wrongly invoked by the Courts below. The Courts below failed to see that it is not the duty of the petitioner to prove his case beyond reasonable doubt and he gave a plausible explanation and the same was proved through the document marked on the side of the defence and also through D.W.1 and from the evidence of cross examination of witnesses.

6.2.The learned counsel further submitted that on reading the evidence of P.Ws.2, 3 and 4, it is clear that the they gave money to the petitioner and hence, the case of the complainant/respondent that he borrowed money from the above said persons and handed over to the petitioner is not acceptable one. In all ways, both the Courts below failed to appreciate the same in proper manner and hence, both the Courts below erroneously recorded the conviction. In this Case, both the Courts below committed error of law by not properly appreciating both the documents and oral evidence and specifically, his explanation under Section 313 Cr.P.C. Therefore, he seeks for interference in the concurrent findings made by



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both the Courts below and he placed reliance of the following judgments:

1. ***Basalingappa Vs. Mudibasappa reported in 2019 5 SCC 418,***
2. ***K.Baskaran Vs. Sankaran Vaidhyan Balan and another reported in 1999 7 SCC 510***
3. ***Bir Singh Vs. Mukeshkumar reported in 2019 4 SCC 197***

7.The learned counsel appearing for the respondent submitted that the Courts below considered all the defence and given a concurrent finding without any perversity and this Court has no jurisdiction to interfere under Sections 397 r/w 401 of Cr.P.C.

7.1.The learned counsel further submitted that both the Courts below appreciated the evidence of P.Ws.1 to 4 and D.W.1 and perused the document filed by the both the parties and gave concurrent findings that through the respondent has no means to pay the amount, he borrowed the said amounts from various persons and handed over the same to the petitioner. To prove the borrowal, he examined P.Ws.2 to 4. Therefore, the source of money has been established. The case of the petitioner that the cheque was not issued an the alleged because the MICR number is not available on the cheque. Even at the



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time he issued many cheques to various persons without “MICR”. Therefore, the said plea was negated by the both the Courts below and the same was not liable to be interfered. In the complaint, it is specifically stated by the plaintiff in O.S.No.117 of 2014, the said Padmavathi sought the original document from him and he handed over the same to file a suit against the petitioner and other persons. Therefore, he gave the explanation and the explanation was accepted by the both the Courts below. Hence, there is no necessity to interfere with the same.

7.2.The learned counsel further submitted that the foundational facts ie, issuance of cheque was proved through the legal evidence. Hence, it is the duty of the petitioner to dispel the same under Sections 138 and 139 NI Act. The accused even though appeared and marked number of documents, the same was appreciated by the both the Courts below stating that the accused has not established his defence by preponderance of probability. Therefore, both the Courts below appreciated the same and convicted the petitioner and sentence was imposed under Section 138 of NI Act and the same was not liable to be interfered. In support of this contention he placed the following judgments:

1.Rangappa Vs. Srimohan reported in (2010) 11 SCC 441



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2. *Tedhi Singh Vs. Narayan Dass Mahant reported in (2022) 6 SCC 735*

3. *Kuppayammal Vs. A.Sitheswaran & others reported in 2012 2 LW 48*

8. This Court considered the rival submissions made on either side and also perused the materials available on record and precedents relied upon by them.

9. In this case, from the detailed submission made by both the counsel the following questions are framed for consideration:

9.1. Whether the courts below correctly recorded conviction against the petitioner for the offence under Section 138 of the NI Act?

9.2. Whether the Courts below are correct in recording the finding that the petitioner has not proved his defence?

10. In this case, the petitioner and one Senthilkumar are relatives and friends. Since the petitioner was working in the foreign country, he intended to invest the money for purchasing the land in Pattukottai. Therefore, he trusted Senthilkumar and asked his wife to handover the money and entire transaction documents to the said Senthilkumar. At that time, number of unfilled cheques



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were given to the said Senthilkumar and the same was misused by him through the complainant in filing the present cheque case on the basis of the motive discussed below:

10.1.The petitioner initially purchased a land in S.No.68/1A and Senthilkumar made arrangements to purchase the said land. He falsely stated as if the said land has pathway. Therefore, the petitioner had some disputes with the said Senthilkumar. Subsequently, the petitioner purchased the pathway by negotiating with pathway owners namely Mokana, Jeevanantham, Baskar, Meyyanathan, Babu and Vasanthi. Subsequently, the land value got increased, due to the facility of pathway. In the said dispute, the original vendor and Senthilkumar conspired together and filed a suit in O.S.No.117 of 2014 through Padmavathi for declaration and injunction of the said property. In the suit, it is specifically prayed for declaration of the sale deed executed by the husband of the Padmavathi as null and void. In the said suit, the original document was marked. According to the petitioner, original document and files, all were entrusted with Senthilkumar to purchase the property. To consider the said defence, it is relevant to extract the following dates and events:



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Dates	Events
23.11.2011	Senthilkumar, friend of the petitioner was acted as a power of attorney of one Mrs.R.Padma, on the basis of the registered power deed dated 03.08.2011, executed sale deed in respect of S.F.No.68/1A Ponnava rankottai in favour of the petitioner's wife Kalpana Senthilkumar made a false representation as if the said property without encumbrance. There was no pathway.
10.10.2012	Therefore, he had extreme steps to purchase the pathway from their owner. Finally purchase of pathway effected through the sale deed dated 10.10.2012 in favour of his wife Kalpana.
Prior to 2014	The petitioner handed over the said two sale deeds in the custody of the respondent and asked to arrange the debt amount
	On the basis of the purchase, he promoted a layout value of the property substantially increased.
22.02.2014	The said Padma filed a suit against the petitioner's wife and the said Senthilkumar to cancel the sale deed
24.06.2014	The petitioner's wife laid a complaint against Senthilkumar, Karnan about their Criminal intimidation and their action of threatening to demand the execution of the sale deed
11.08.2014	The petitioner's wife filed a written statement.
10.02.2015	The respondent/complainant pleaded that the petitioner in order to purchase the pathway to the properties, he was in need of Rs.25,00,000/- and requested to pay the debt.
12.12.2015	The respondent did not have such amount. Hence, he borrowed from one Gnanasekaran (P.W.2), Duraisamy(P.W.3) and Elanchezian (P.W.4) and paid the same to the petitioner on 12.12.2015. The petitioner also handed over to the original sale deed dated 23.11.2011



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16.03.2015	Subsequently, in order to repay the said amount, the petitioner allegedly issued a cheque dated 16.03.2015, for the value of Rs.25,00,000/-
06.04.2015	The said cheque was presented for collection and the same was dishonoured on 09.04.2015 as funds insufficient.
21.04.2015	Statutory notice was issued to the petitioner on behalf of the respondent under Section 138 of the Negotiable Instruments Act.
30.04.2015	Reply notice was issued by the petitioner.

11.It is clear from the above events and connected records that the petitioner purchased the land in S.No.68/1A through sale deed dated 23.11.2011. After that he purchased the pathway from the pathway owners namely Mokana, Jeevanantham, Baskar, Meyyanathan, Babu and Vasanthi, by negotiating with them at the cost of payment of sale consideration as plots. Subsequently, the land value substantially increased. Senthilkumar made a demand. The same was refused by the petitioner. Therefore a dispute arose between the petitioner and the said Senthilkumar. Senthilkumar insisted to relinquish the right over the property and threatened to execute the sale deed. Hence the petitioner's wife made a complaint before the jurisdictional police station relating to the criminal intimidation committed by Senthilkumar and the same is still pending. D.W.1, namely, the petitioner narrated the above events cogently and deposed that the cheque was not issued in favour of the respondent. It is well settled principle



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that the accused need not prove his defence beyond reasonable doubt. It can be proved, as per the Supreme Court Judgment by preponderance of probability.

In **Basalingappa v. Mudibasappa, (2019) 5 SCC 418 at page 432**

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come to the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

25.5. It is not necessary for the accused to come in the witness box to support his defence.

*In **Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513 at page 520***

20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular



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circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not



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incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act.

The Hon'ble Supreme Court in ***Rangappa v. Sri Mohan, (2011) 1 SCC (Cri) 184 at page 454***

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of “preponderance of probabilities”. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.



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Further, the petitioner specifically filed detailed explanation under Section 313 of Cr.P.C. The Hon'ble Supreme Court has held in the following cases the Court should have considered the explanation furnished by the accused during the course of the proceedings under Section 313 of Cr.P.C, and the non consideration is a ground for an acquittal.

In Reena Hazarika v. State of Assam, (2019) 13 SCC 289 at page 295

19. Section 313 CrPC cannot be seen simply as a part of audi alteram partem. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2) CrPC. The importance of this right has been considered time and again by this Court, but it yet remains to be applied in practice as we shall see presently in the discussion to follow. If the accused takes a defence after the prosecution evidence is closed, under Section 313(1)(b) CrPC the Court is duty-bound under Section 313(4) CrPC to consider the same. The mere use of the word “may” cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be



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caused thereby. Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available, is an entirely different matter. If there has been no consideration at all of the defence taken under Section 313 CrPC, in the given facts of a case, the conviction may well stand vitiated. To our mind, a solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313 CrPC and to either accept or reject the same for reasons specified in writing.

*20. Unfortunately neither the trial court nor the High Court considered it necessary to take notice of, much less discuss or observe with regard to the aforesaid defence by the appellant under Section 313 CrPC to either accept or reject it. The defence taken cannot be said to be irrelevant, illogical or fanciful in the entirety of the facts and the nature of other evidence available as discussed hereinbefore. The complete non-consideration thereof has clearly caused prejudice to the appellant. Unlike the prosecution, the accused is not required to establish the defence beyond all reasonable doubt. The accused has only to raise doubts on a preponderance of probability as observed in *HateSingh Bhagat Singh v. State of Madhya Bharat* [*Hate Singh Bhagat Singh v. State of Madhya Bharat*, 1951 SCC 1060 : AIR 1953 SC 468 : 1953 Cri LJ 1933] observing as follows: (AIR p. 471, para 26)*



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“26. We have examined the evidence at length in this case, not because it is our desire to depart from our usual practice of declining to re-assess the evidence in an appeal here, but because there has been in this case a departure from the rule that when an accused person puts forward a reasonable defence which is likely to be true.... then the burden on the other side becomes all the heavier because a reasonable and probable story likely to be true when pitted against a weak and vacillating case is bound to raise reasonable doubts of which the accused must get the benefit. ...”

In Jai Prakash Tiwari v. State of M.P., reported in 2022 SCC OnLine SC 966

30. Moreover, it is the solemn duty of the courts below to consider the defence of the accused. The same must be considered with caution and must be scrutinised by application of mind by the judge. The Court may accept or reject the same, however it cannot be done cursorily. The reasoning and the application of mind must be reflected in writing. However, from the observations extracted above, it is clear that the courts below have failed to undertake this solemn duty. Rather, the evidence of the accused has been dealt by the Court in a casual manner.



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In this case, the petitioner gave the following explanation in the questioning under Section 313 of Cr.P.C.:

After the complainant's evidence, the incriminating evidence and circumstance was put to the Accused in elaborate, under Section 313(1)(b) of the Code, for which he pleaded that "The evidence is false and it is a false case. He doesn't know about P.W. 3 Gnanasekar. P.W.3 Duraisamy and the accused are Business Partners but there is no outstanding dues with him. The accused know about P.W.4 Elanchezhiyan and he converted the land as housing plots. But there is not transaction with him, now due to the escalation of the land value. The complainant and P.W.2 to P.W.4 attempted to grab money from the accused. The disputed cheque is a old Non MICR cheque. The accused stated that he never borrowed any amount from the complainant and never issued the cheque to him. When the accused in Singapore he issued blank cheque to his wife. After he returned to India in the year of 2011. He obtained new CTS cheque book from his bank, moreover the accused paid the amount to the complainant through new cheque book. There is a misunderstanding between the complainant and the accused.



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12.To prove the same, he examined himself as D.W.1 and marked Ex.D1 to Ex.D14 and also relied the evidence of P.W.2, P.W.3 and P.W.4 to prove his defence that the respondent has no means to give the huge amount of Rs. 25,00,000/-. But, the Courts below has not properly considered this. Hence, this Court applying the above principle laid down by the Hon'ble Supreme Court in ***Reena Hazarika V. State of Assam*** reported in ***2019 13 SCC 289 at Page 295*** and in ***Jai Prakash Tiwari v. State of M.P.*** reported in ***2022 SCC Online SC 966*** acquit the petitioner.

13.It is settled law that defence of the accused may be proved either through examination of the accused and filing defence documents or through cross examination of the witnesses and relying on documents. In this case, the accused raised a plausible defence and to establish the same, he examined himself as a defence witness, namely, D.W.1 and deposed before the Court below and narrated the above events cogently and also marked supporting documents under Ex.D.1 to Ex.D.16. Further, he was subjected to incisive cross examination and nothing was elicited to disbelieve his cogent evidence. The accused gave explanation, during the questioning under 313 Cr.P.C that he never met the complainant and asked to give money. He also questioned the source of



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the huge amount of Rs.25,00,000/-. P.W.2, P.W.3 and P.W.4 were examined on the side of the complainant to corroborate the version of P.W.1 that he borrowed the amount from P.W.2, P.W.3 and P.W.4 and handed over the same to the petitioner. To consider the said plea, it is relevant to extract the material portion of the evidence of P.W.2, P.W.3 and P.W.4, which are as follows:

PW2:-

நானும் வாதி பிரபாகரனும் சித்தப்பா பெரியப்பா பிள்ளைகள் என்ற உறவு முறை என்றால் சரிதான். எனக்கும் பிரபாகரனுக்கும் நாளது தேதிவரை எவ்வித மனவருத்தமும் கிடையாது என்றாலும் சுழிகமாகத்தான் இருக்கிறோம் என்றாலும் சரிதான். பிரபாகரனுக்கு பணம் கொடுக்கும் போது அதற்கு அத்தாட்சியாக துண்டு சீட்டுக்கூட எதுவும் எழுதி வாங்கி கொள்ளவில்லை என்றால் சரிதான். எவ்வளவு மாதத்தில் திருப்பி தருவதாக பிரபாகரன் சொன்னார் என்றால் ஒரு மாதத்தில். அவர் சொன்ன ஒரு மாத கெடு முடிந்த பிறகு அவரிடம் எந்த ஆவணமும் எழுதி வாங்கவில்லை என்றால் சரிதான். அவரிடமிருந்து பணத்தை வசூலிக்க சட்டபூர்வமான நடவடிக்கை எதுவும் நாளது தேதிவரை எடுக்கவில்லை என்றால் சரிதான். நான் வருமான வரி செலுத்தி வருகிறேன். நான் வாதிக்கு பணம் கொடுத்த விவரத்தை வருமான வரி கணக்கில் சொல்லியுள்ளேனா என்றால் இல்லை. நான் ரியல் எஸ்டேட் தொழில் செய்து வருகிறேன் என்றால் சரிதான். நான் தினசரி வரவு செலவு கணக்கை பராமரித்து வருகிறேனா என்றால் இல்லை. நான் வாதிக்கு பணம் கொடுத்தது எங்கு வைத்து கொடுத்தேன் யார் முன்பு கொடுத்தேன் என்ற



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விவரத்தை முதல் விசாரணையில் சொல்லவில்லை என்றால் சரிதான். போதிய வசதி வாய்ப்பு இல்லாத பிரபாகரனை நம்பி ரூ.5,00,000/- நான் கொடுக்க வாய்ப்பில்லை என்றாலும் சரியல்ல. உண்மையில் நான் பணம் கொடுத்திருந்தால் மேற்படி விவரத்தை வருமான வரி கணக்கில் குறிப்பிட்டிருப்பேன் என்றால் சரியல்ல. எனது தம்பியான வாதி கேட்டு கொண்டதற்கிணங்க அவருக்கு ஆதரவாக உண்மைக்கு மாறாக சாட்சியம் அளிக்கிறேன் என்றால் சரியல்ல.

PW3:-

நான் பட்டுக்கோட்டை ஸ்டேட் பேங்க் அருகில் நியு விஜய் எலெக்ட்ரிக்ஸ் என்ற பேரில் கடை நடத்தி வருகிறேன் என்றால் சரிதான். நானும் எதிரியும் வியாபார ரீதியில் பார்ட்னர்கள் இல்லை என்றால் சரிதான். நான் வருமான வரி செலுத்துகிறேன். நான் தினசரி வரவு செலவு கணக்கை பராமரித்து வருகிறேன் என்றால் இல்லை கடை சம்மந்தமான வரவு செலவுகளை மட்டும் பராமரித்து வருகிறேன். பிரபாகரனுக்கு கொடுத்த பணம் குறித்த எனது வருமான வரிகணக்கில் சொல்லியுள்ளேனா என்றால் கைமாற்றாக கொடுத்ததால் அதில் சொல்லவில்லை. பணத்தை எவ்வளவு நாட்களில் திருப்பி தருவதாக கூறி வாங்கினார் என்றால் ஒரு மாதத்தில். வாதியிடம் பணம் கொடுத்தபோது அத்தாட்சியாக எவ்வித ஆவணமும் எழுதி வாங்கவில்லை என்றால் சரிதான் எனது நெருங்கிய நண்பர் என்பதால் வாங்கவில்லை. வாதியிடம் பணம் கேட்டு எவ்வித நடவடிக்கையும் நாளது தேதி வரை அவருக்கு எதிராக எடுக்கவில்லை என்றால் சரிதான். பணம் கேட்டபோது செக் கேஸ் இருப்பதாகவும் அதில் பணம்



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வந்ததும் தருவதாகவும் பொறுத்திருக்குமாறும் கூறியுள்ளார். சொன்ன காலக்கெடு முடிந்தும் பணத்தை தராததால் அவரிடம் ஆவணம் எதுவும் எழுதி வாங்கவில்லை என்றால் சரிதான். உண்மையில் நான் பணம் கொடுத்திருந்தால் அதை நான் வருமான வரிகணக்கில் காட்டியிருப்பேன் என்றால் சரியல்ல.

PW4:-

வாதி என்னிடம் 5 வருடங்கள் பணிபுரிந்ததாக சொல்லிய சமயத்தில் அவருக்கு மாதம் எவ்வளவு சம்பளம் கொடுத்தேன் என்றால் ரூ.5,000/- கொடுத்தேன். வாதி எனக்கு ரியல் எஸ்டேட் சம்மந்தமான வேலைக்கு ஒத்தாசையாக இருந்தார் என்றால் சரியல்ல. அவர் பீல்டு ஓர்க் மட்டும் பார்த்து வந்தார். நான் பிரபாகரனுக்கு பணம் கொடுத்த சம்மந்தமாக அத்தாட்சி ஆவணம் எதுவும் எழுதி வாங்கவில்லை என்றால் சரிதான். காலியிடம் வைத்திருப்போர்களை அணுகி ஒப்பந்தம் போட்டு கொண்டு அந்த இடத்தை பிளாட் போட்டு கொடுத்து கட்டணம் பெற்றுக் கொள்வேன் என்றால் இல்லை என்னை நாடிவரும் நபர்களுக்கு மட்டும் பிளாட் போட்டு கொடுப்பேன். எதிரி கேட்டுக்கொண்டதால் அவர் இடத்தை பிளாட் போட்டு கொடுத்தேன். நான் வருமான வரி செலுத்தி வருகிறேன். பிரபாகரனுக்கு கொடுத்த தொகையை வருமான வரி கணக்கில் காட்டவில்லை என்றால் சரிதான். எவ்வளவு நாட்களில் திருப்பி தருவதாகக்கூறி என்னிடம் கடன் வாங்கினார் என்றால் ஒரு மாதத்தில். அவர் சொன்ன கெடு முடிந்தும் அவரிடம் ஆவணம் எழுதி வாங்கவில்லை என்றால் எனது நீண்டகால நண்பர் என்பதால் நான் எதுவும் எழுதி வாங்கவில்லை. என்னிடம் 5,000ம் மாத சம்பளம் வாங்கிய எவ்வித வசதி வாய்ப்பும் இல்லாத பிரபாகரனுக்கு நான் ரூ.5,00,000/-



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பணம் கொடுத்திருக்க வாய்ப்பு இல்லை என்றாலும்
வழக்கிற்காக பொய்யாக சாட்சியம் அளிக்கிறேன்
என்றாலும் சரியல்ல.

14.From the above evidence, it is clear that even though P.W.2, P.W.3 and PW4 are income tax assesses, they never had shown the said amount in their income tax returns and till date they never asked for repayment. P.W.4 is the servant of P.W.1/complainant and he further deposed that he gave Rs.5000/- to him as a monthly salary. In the said circumstances, the case of P.W.1 that he borrowed the amount from P.W.4 is unbelievable. Therefore, there is some merit in the contention of the petitioner that PW2,PW3 and PW4 would not have given the amount of Rs.25,00,000/- to the respondent. Apart from that, their specific case is that the amount was borrowed for purchase of a pathway to the properties. It is pertinent to note that the pathway was purchased much earlier in the year 2011 and the purchase amount is mentioned only as Rs.69,600/-. Hence it is clear that the case of the complainant that he gave the money for purchase of the pathway is false. Apart from that PW2,PW3 and PW4 are all close associates of the petitioner. In the said circumstances, in the absence of obtaining proper documents as security for the amount, this court is unable to accept the respondent's case that the petitioner borrowed the money and gave a cheque to



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discharge the same. In all circumstances, the defence of the petitioner that the respondent had no means to pay the huge amount of Rs.25,00,000/- is proved not only by touch stone of preponderance of probabilities but also to some extent of beyond reasonable doubt.

15. It is the further case of the petitioner that the said Senthilkumar conspired with P.W.1, P.W.2, P.W.3 and P.W.4 and filed this case with the unfilled cheques entrusted with him at the time of purchasing the property in the year 2011. It is the specific case of the respondent that he received the original documents of the petitioner's wife property in the year 2013 in order to arrange the debt. In the said circumstances, the said original document was entrusted with the said vendor of the petitioner's wife namely Padhmavathy to file the suit for cancellation of the said sale deed of the petitioner's wife. In the said suit, it is the specific plea of the said Padhmavathy that Senthilkumar made multiple alienations on the basis of the power deed executed by her which is not valid one. She made allegation against Senthilkumar and the petitioner's wife. In the said peculiar circumstances, there was no explanation on the side of the respondent relating to the fact that the document entrusted with the respondent forms part of the civil suit in O.S.No.117 of 2014, filed by the Padmavathi and



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therefore, handing over the documents to the said Padmavathy by the respondent itself shows that they had colluded together and made a false claim, by initiating this proceedings.

16.In the above circumstance, this court feels that both the Courts below failed to consider the above material circumstances and erroneously convicted the petitioner without finding that the petitioner established his case by giving explanation and proved his defence by examining himself and filing documents and other through answers elicited from P.Ws.1 to 4. Therefore, in all aspects, this court inclines to accept the case of the petitioner and set aside the concurrent findings of both the Courts below.

17.When the evidence has not been properly appreciated by the Courts below, which resulted into the gross miscarriage of justice, the High Court has jurisdiction to re-appreciate the evidence in order to arrive at a finding whether the conclusion of the Courts below is correct or not. Hence, this Court exercises the jurisdiction and finds that the complainant has not established his case beyond reasonable doubt and accordingly, question is answered in favour of petitioner. In result, this revision is liable to be allowed. As a sequel, the



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judgments of both the courts below are liable to be set aside. petitioner is acquitted from all charges.

18.Accordingly, this Criminal Revision Case is allowed by setting aside the Judgment passed by the III Additional District & Sessions Court, Thanjavur @ Pattukottai, dated 12.10.2022 in Crl.A.No.23 of 2019 confirming the judgment passed in S.T.C.No.45 of 2016 dated 31.01.2019 on the file of the Judicial Magistrate Court (FTC), Pattukottai. Consequently, the conviction and sentence of imprisonment passed by court below are set aside. Petitioner is entitled to acquittal and refund of fine amount if any paid. The connected Criminal Miscellaneous petition is closed. Bail bond executed by the petitioner stands cancelled. The petitioner is set at liberty unless his presence is necessary in any other case.

19.03.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
vsg



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1. The III Additional District & Sessions Court,
Thanjavur @ Pattukottai.
2. The Judicial Magistrate Court(FTC),
Pattukottai.
3. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

vsg/sbn

Pre-delivery Order made in
Crl.R.C(MD). No.1272 of 2022
and
Crl.M.P(MD). No.16057 of 2022

19.03.2024