

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.12.2015

DELIVERED ON : 22.12.2015

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
CRL.R.C.No.1202 of 2011

V.S.Muruganandam
S/o.Shanmugam

... Petitioner/Appellant/Accused

vs.

P.Madhaeswaran
S/o.Periasamy

...Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the judgment of learned Additional Sessions Judge, Fast Track Court, Namakkal, passed in C.A.No.14 of 2010 on 09.08.2011 confirming the judgment of learned Judicial Magistrate II, Namakkal, passed in S.T.C.No.353 of 2009 on 29.01.2010.

For Petitioner : Mr.K.V.Sridharan

For Respondent : Mrs.R.Kamala Rani

O R D E R

This revision is preferred against two concurrent judgments of Courts below convicting the petitioner for offence u/s.138 of the Negotiable Instruments Act and sentencing him to undergo 1 year S.I.

2. Respondent preferred a complaint informing that the petitioner borrowed a sum of Rs.9,50,000/- from him and towards repayment thereof, issued a cheque in such sum bearing No.231517 dated 23.01.2009 drawn on Vijaya Bank, Thanjavur Branch. When presented for payment on 23.02.2009, the same were returned unpaid with the endorsement 'Funds Insufficient'. Respondent/ complainant had caused statutory notice on 28.02.2009. Petitioner had caused reply to such notice. On having no payment as demanded in the statutory notice, the respondent preferred a complaint in keeping with Section 138 of the Negotiable Instruments Act. The same was taken on file in S.T.C.No.353 of 2009 on the file of learned Judicial Magistrate II, Namakkal.

3. Before the trial Court, the complainant examined himself and marked five exhibits. None were examined on behalf of the defence nor were any documents marked.

4. On appreciation of materials before it, the trial Court rendered a finding of conviction, sentenced the petitioner to undergo 1 year S.I. There against, the petitioner preferred an appeal in C.A.No.14 of 2010 on the file of learned Additional District Munsif, Namakkal, which came to be dismissed under judgment dated 09.08.2011. Hence, this revision.

5. Heard learned counsel for petitioner and learned counsel for respondent. Perused the materials available on record.

6. Learned counsel for petitioner submitted that in the statutory notice dated 28.02.2009 issued u/s.138 of the Negotiable Instruments Act, the date of borrowing was informed as 02.10.2008 whereas in the cross-examination, the complainant has informed the date of borrowing as 21.01.2009. Informing that the other writings on the cheque were in a different hand and ink than that of the petitioner's signature found on the cheque, learned counsel submitted that the petitioner had financial dealings with one Periasamy and a cheque left with such person had been misused by respondent/complainant. Respondent was a total stranger to the petitioner. Through cross-examination of respondent, it had been culled out that he regularly had not filed income-tax returns and there was nothing to show that he was the successful contractor he claimed to be. Respondent had also admitted that he had not drawn the amount of Rs.9,50,000/- from any bank account of his. Respondent, as a person unable to establish his means, could not have been in possession of the sizeable sum of Rs.9,50,000/-. Learned counsel submitted that though in the statutory notice, the respondent had claimed to be a close friend of petitioner, in the cross-examination he had deposed to the contra. By preponderance of probabilities, the petitioner/accused has been able to establish that there was no debt owed to respondent and hence, a duty was cast upon the respondent to prove the debt, which he had failed to do. The respondent's contention of having made a demand for repayment within three days of the date of borrowing rendered his case more suspect. Submitting as above, learned counsel submitted that Courts below have erred in arriving at a finding of conviction and the same requires interference.

7. Learned counsel for respondent submitted that the mentioning of the date of borrowing was a mere mistake. As observed by Courts below, the petitioner had not let in any evidence towards proving his allegations of his dealings with one Periasamy and of the cheque having been handed over to

such person by petitioner. Submitting as above, learned counsel submitted that the findings of Courts below are well-reasoned ones which did not call for any interference.

8. On consideration of the rival submissions, this Court would allow the revision for the following reasons:

- (i) In the statutory notice issued u/s.138 of the Negotiable Instruments Act dated 28.02.2009, the date of borrowing was informed as 02.10.2008 whereas in the cross-examination, the complainant has informed the date of borrowing as 21.01.2009. The contention of the defence that upon realization that the date informed in the statutory notice viz., 02.10.2008 was a holiday on account of Gandhi Jayanthi, the respondent/complainant has changed his stand in the examination in Court and informed the date of borrowing as 21.01.2009 is one that easily cannot be brushed aside.
- (ii) Petitioner is a person resident at Thanjavur and the respondent is a person resident at Namakkal. In the complaint, the respondent has informed of the petitioner being a close friend but deposed to the contra in the course of cross-examination in Court.
- (iii) The signature and other writings on the cheque are of different ink.
- (iv) Through cross-examination it has been established that there is no proof of the respondent being a successful contractor and that till recently he has not filed income-tax returns. He has also admitted that the cheque amount of Rs.9,50,000/- had not been disclosed in the income-tax returns.

Given the above, it would have to be held that the petitioner has discharged his initial burden cast upon him u/s.139 of the Negotiable Instruments Act. While so, it is for the respondent to have proved the debt. The respondent has failed to do so.

This Criminal Revision is allowed. The judgments of Courts below convicting the petitioner and sentencing him to undergo 1 year S.I. are set aside. Petitioner is acquitted of all charges. Bail bonds, if any, executed by petitioner shall stand cancelled.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

gm

To

1.The Judicial Magistrate II,
Namakkal

2. The Additional Sessions Judge
Fast Track Court, Namakkal

Copy to

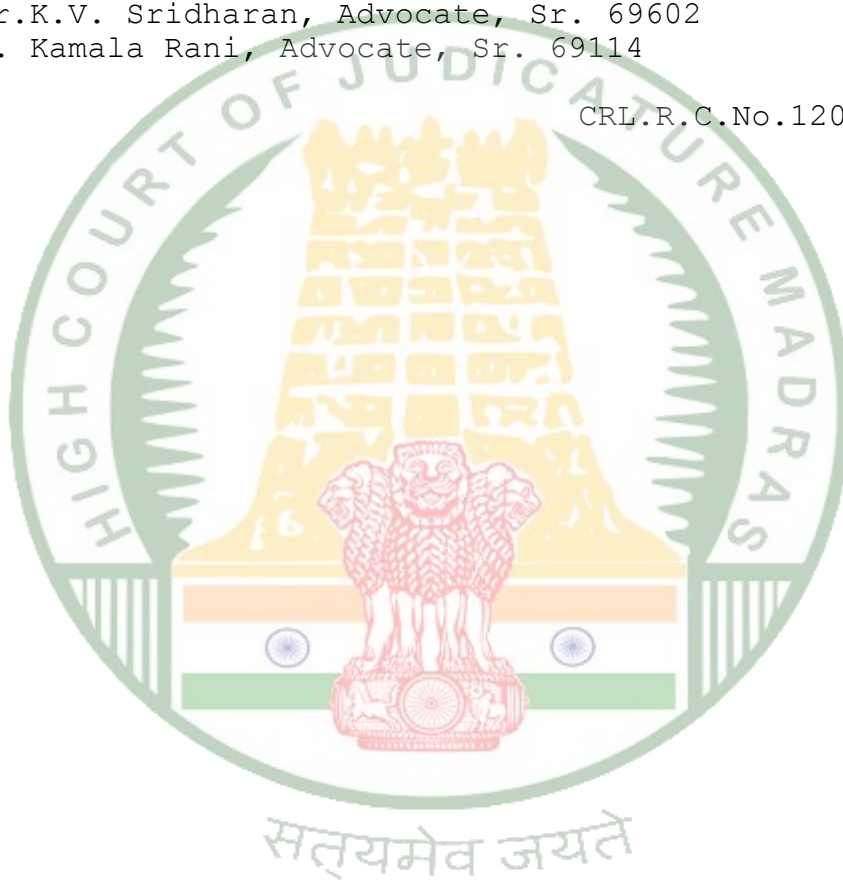
The Section Officer
Criminal Section,
High Court, Madras

1 cc to Mr.K.V. Sridharan, Advocate, Sr. 69602

1 cc to R. Kamala Rani, Advocate, Sr. 69114

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