

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.99 of 2010

and

M.P.Nos.1 and 2 of 2010

Rajmani .. Petitioner

Versus

K.Sundara Pandian ... Respondent

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 15.04.2008 passed by the learned Additional District and Sessions Judge (Fast Track Court No.3), Vridhachalam in C.A.No.17 of 2007 in confirming the conviction and sentence passed by the learned District Munsif cum Judicial Magistrate, Neyveli in C.C.No.179 of 2004 dated 25.01.2007.

For Petitioner : No appearance

For Respondent : Mr.Ilanthiraiyan
for M/s.Sai, Bharath and Ilan

ORDER

Though the case has been listed under the caption "for dismissal", when the matter is taken up today, there is no representation for the petitioner. Hence, the Criminal Revision Case is taken up for disposal on merits as per the judgment of the Hon'ble Supreme Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka].

2. The petitioner is the sole accused in C.C.No.179 of 2004 on the file of the learned District Munsif cum Judicial Magistrate, Neyveli and he has been convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for three months. As against the conviction and sentence imposed, the petitioner filed Crl.Appeal No.17 of 2007 and the first appellate Court by judgment dated 15.04.2008 confirmed the same. Aggrieved by the same, the present Criminal Revision Case is filed.

3. The case of the complainant in brief is as follows:

The petitioner/accused borrowed a sum of Rs.1,00,000/- for his business purposes and in order to discharge the legally enforceable debt, issued a post dated cheque for Rs.1,00,000/-. However, when it was presented for payment, the cheque was returned with the endorsement "insufficient funds". Hence, the complainant issued a legal notice; though a reply notice was issued, the amount was not repaid. Hence, the complaint.

4. The main ground of attack made by the petitioner/accused in this revision is that both the Courts below did not take into consideration the fact that the loan amount was not borrowed by the petitioner and that he has issued the cheque in question only as a security for the mortgage loan availed by his brother, one Vinod Babu. He would further contend that when there is no liability, there is no question of proving the same. Accordingly, he would pray for setting aside the conviction and sentence ordered by both the courts below.

5. Learned counsel for the respondent/complainant who would submit that both the Courts below have categorically taken note of the fact that the offence was not proved by the accused in a manner known to law. Further, he would that the issuance of the cheque as well as the signature was admitted by the petitioner. When that being so, no interference is warranted in this revision.

6. Perused the records.

7. On a careful perusal of the judgments passed by the Courts below, it is seen that the trial court has clearly held that the accused admits the issuance of the cheque as well as the signature contained in it. When there is an admission regarding the issuance of cheque, then it is for the petitioner/accused to rebut the same. In this case, though the petitioner denies borrowal of Rs.1,00,000/-, he admits that he issued the cheque as a security for the loan borrowed by his brother. The first appellate Court also after analysing the entire oral and documentary evidence produced confirmed the conviction and sentence ordered by the trial court. In view of the concurrent finding given by both the Courts below, I do not find any reason to interfere with the same in this revision.

8. Since the matter is pending from 2010 and the cheque was of the year 2004, while confirming the conviction ordered by both the Courts below, this Court is inclined to modify the sentence imposed for a period of one year simple imprisonment into one that of payment of compensation. Accordingly, the following order is passed:

"The sentence to undergo one year simple imprisonment is set aside. Instead the petitioner is directed to pay a sum of Rs.2,00,000/- [Rupees two lakhs only], as compensation, viz., twice that of the cheque amount of Rs.1,00,000/- as the transaction took place eleven years

ago, either directly to the respondent/complainant or to the credit of C.C.No.179 of 2004 on the file of the learned District Munsif cum Judicial Magistrate, Neyveli within a period of three months from the date of receipt of a copy of this order. On such deposit being made, the learned Magistrate is directed to disburse the compensation amount to the respondent/complainant on proper identification. It is also made clear that if the petitioner/accused fails to deposit the compensation amount as ordered by this Court, within the stipulated time, he has to undergo simple imprisonment for a period of one year as ordered by the trial court and confirmed by the first appellate court. In such event, the trial court shall take appropriate steps as are necessary to secure the presence of the petitioner/accused to undergo the sentence of one year simple imprisonment imposed by the Courts below."

9. With the above modification, the Criminal Revision Case is partly allowed. Consequently, the connected miscellaneous petitions are closed.

vj2

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Additional District and Sessions Judge (Fast Track Court No.3), Vridhachalam.
 2. The District Munsif cum Judicial Magistrate, Neyveli.
 3. The Public Prosecutor, Madras.
- + 1 cc to M/s.Sai, Bharath and Ilan, Advocates SR 52343

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Cr1 RC No.99 of 2010