

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.335 of 2014

R.Venkatesan

... Petitioner/Accused

Vs.

V.Sathyamoorthy

.... Respondent/Complainant

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of the Code of Criminal Procedure, praying to allow the revision petition by setting aside the conviction passed by the Principal District and Sessions Judge, Thiruvavarur, in C.A.No.41 of 2008, dated 07.02.2014 confirming the judgment of the learned Judicial Magistrate, Thiruvavarur, in C.C.No.420 of 2003, dated 19.05.2006.

For Petitioner : Mrs.S.Sridevi

For Respondent : Mr.S.Senthilkumar

ORDER

This Criminal Revision Case is directed against the order passed by the learned Principal District and Sessions Judge, Thiruvavarur, in C.A.No.41 of 2008, dated 07.02.2014 confirming the judgment of the learned Judicial Magistrate, Thiruvavarur, in C.C.No.420 of 2003, dated 19.05.2006.

2. The brief facts of the case are as follows:-

The revision petitioner, who is an accused in C.C.No.420 of 2003, borrowed a sum of Rs.2,50,000/- from the respondent/complainant in the month of January 2002 for development of his business and issued a cheque dated 12.08.2003 bearing No.078114, for Rs.2,50,000/- drawn on State Bank of India, Thiruvavarur Branch and when the said cheque was presented for collection by the complainant, it was returned with an endorsement "insufficient funds". Hence, immediately, the respondent/complainant has issued a statutory notice and the notice was returned with an endorsement "unclaimed". Immediately, the respondent/complainant presented a complaint before the learned Judicial Magistrate, Thiruvavarur. The learned Magistrate, after perusing the entire evidence and documents adduced on either side, found the revision

petitioner/accused guilty under Sections 138 and 142 of the Negotiable Instruments Act and imposed a punishment of one year rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months simple imprisonment and directed the accused to pay a sum of Rs.2,50,000/- to the complainant towards cheque amount and Rs.12,650/- towards costs, within a period of three months. Aggrieved by the said order of the the learned Magistrate, the revision petitioner/accused had preferred an appeal before the learned Principal District and Sessions Judge, Thiruvavarur, and the appeal was numbered as C.A.No.41 of 2008 and the learned Appellate Judge, after perusal of the entire materials produced before him, finally dismissed the appeal confirming the judgment of the trial Court. Against which, the present criminal revision case is preferred by the accused.

3. The learned counsel for the revision petitioner/accused would mainly contend that the judgments of the Courts below are contrary to law, weight of evidence and probabilities of the case and both the Courts below have not considered the plea of the petitioner that he has no account with the Bank as stated in the complaint and his name is only R.Venkatesan and not T.S.R.Venkatesan. Hence, without considering the fact that the cheque was not issued by the revision petitioner, the trial Court and the First Appellate Court, rendered judgments convicting the revision petitioner which are liable to be set aside and the criminal revision case has to be allowed.

4. The learned counsel for the respondent would vehemently contend that both the Courts below, after analysing the entire evidence and facts and circumstances of the case, passed appropriate orders and there is no illegality or infirmity in the orders passed by both the Courts below and hence, he prayed that the orders of the Courts below have to be confirmed and the Criminal Revision Case has to be dismissed.

5. In this case, the main argument of the learned counsel for the revision petitioner is that the present petitioner's name is only R.Venkatesan and not as T.S.R.Venkatesan.

6. On a perusal of the judgment of the trial Court and also the documents produced on the side of the complainant, it is seen that the disputed cheque was marked as Ex.P.1 and it was compared with the specimen signatures in Exs.A.1 to A.3 and the handwriting expert has given a report stating that the signatures found in Exs.A.1 to A.3 are with that of the disputed signature found in the cheque Ex.P.1. Hence, the signature found in Exs.A.1 to A.3 and also the disputed signature are written by one and the same person and it is clearly proved by the forensic expert. Further, signature of

the revision petitioner/accused obtained in the Court was not compared. Hence, the signature in Exs.A.1 to A.3/specimen signature is different from the signature obtained in the Court is not in any way relevant to the case. But in this case, it was specifically opined by the Forensic Expert that Exs.A.1 to A.3/specimen signature and disputed signatures are signed by one and the same person and the same is clearly proved. Further, in this case, the present petitioner vehemently contended that his name is only R.Venkatesan and not as T.S.R.Venkatesan and hence, the case has to be thrown out. In this case, except the above fact mentioning as a statement, no further evidence was produced on the side of the revision petitioner showing his name only as R.Venkatesan and not as T.S.R.Venkatesan. Further, during the pendency of the criminal revision, the learned counsel for both sides represented that the matter is likelihood of settlement and hence, they seek for an adjournment and adjournment was granted. Subsequently, on the request made by both parties, the matter was referred to National Lok Adalat for settlement. The learned counsel for the revision petitioner has filed a memo stating that the matter may be referred to National Lok Adalat. Previously, on the request made by the complainant's counsel alone, the matter was sent to Lok Adalat and since the matter was not settled before the Lok Adalat, it was returned to this Court. The learned counsel for the revision petitioner contended that only on the request made by the revision petitioner, the matter was referred to Lok Adalat and since the matter was not settled, the bundle was returned to this Court. Again, the revision petitioner has filed a memo for referring the matter to the Lok Adalat and the same was objected by the learned counsel for the respondent/complainant. After that only, the arguments of both parties were heard. Hence, it is clearly proved that the revision petitioner is willing to settle the amount with the respondent/complainant.

7. In this case, since the revision petitioner/accused issued a cheque and the cheque was returned as "insufficient funds" in the account of the revision petitioner, statutory notice was issued by the complainant according to law and in the complaint preferred by the complainant before the trial Court, the accused was convicted and sentenced by the trial Court and the order of the trial Court was upheld by the Appellate Court. In view of the above, it is clearly established that the cheque was issued by the revision petitioner/accused to the respondent/complainant and hence, both the Courts below have correctly come to a conclusion convicting and sentencing the revision petitioner/accused as already stated above.

8. In view of the above facts and circumstances of the case, this Court is of the considered view that there is no

infirmity or illegality in the orders passed by both the Courts below which do not warrant any interference by this Court and hence, the criminal revision case is liable to be dismissed. Accordingly, this Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Jr1

To

1. The Principal District and Sessions Judge,
Thiruvavarur.
2. The Judicial Magistrate,
Thiruvavarur.
3. Do Thro The Chief Judicial Magistrate
Thiruvavarur
4. The Public Prosecutor
High Court, Madras.

2 ccs to Mrs.S.Sridevi, Advocate, sr.55478

1 cc to M/s.Star Associates, Advocates, sr.56126

सत्यमेव जयते

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kra 04.10.2016

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