

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.1365 of 2016

and

Crl.M.P.No.12111 of 2016

Thameemudhar

...Petitioner

vs.

1.K.P.Dayanandan

2.The State Rep.

By the Public Prosecutor

...Respondents

Criminal Revision filed under Section 397 and 401 Cr.P.C. against to set aside the Judgment dated 22.04.2010 passed in C.A.No.47 of 2005 by the II Additional Sessions Judge at Pondicherry confirming the Judgment dated 19.05.2005 passed by the Judicial Magistrate at Mahe in C.C.No.78 of 2004.

For Petitioner : M/s.K.Elango

For Respondent : Mr.K.Rajasrinivas for R1

No Appearance for R2

O R D E R

This revision arises against two concurrent judgments of Courts below convicting the petitioner for offence u/s.138 of the Negotiable Instruments Act and sentencing him to 6 months S.I. and fine of Rs.2,500/- i/d one month S.I.

2. Respondent/de facto complainant preferred a complaint informing that petitioners borrowed a sum of Rs.18,00,000/-. Upon the respondent insisting repayment, petitioners issued a cheque bearing Nos.273896 and 273897 drawn on State Bank of Travancore, Mahe. Respondent presented the cheque, which was returned unpaid for the reason 'insufficient of funds'. Respondent caused statutory notice, followed the procedure envisaged under section 138 of the Negotiable Instruments Act and preferred the complaint. The case was tried in C.C.No.78 of 2004 on the file of learned Judicial Magistrate, Mahe.

3. Before the trial Court, two witnesses were examined and thirteen documents were marked on the side of the prosecution and two witnesses were examined and four documents were marked on the side of the defence. On appreciation of materials before it, trial Court, under judgment dated 19.05.2005, acquitted the accused. Aggrieved, petitioner/de facto complainant preferred an appeal in C.A.No.47 of 2005 on the file of Learned II Additional Sessions Judge, Pondicherry, which came to be dismissed under judgment dated 22.04.2010. Hence, this revision.

4. Heard learned counsel for petitioner and learned counsel for 1st respondent.

5. In convicting the petitioner, the courts below has found as follows:

(i) The contention of the petitioner/accused that the respondent/complainant has failed to enter the box to give evidence and substituted has presence with the Power of Attorney Holder has been rejected on the reasoning that Ex.P1- Power of Attorney, clearly authorize P.W.1 to give evidence on behalf of respondent/complainant.

(ii) The contention of the petitioner/accused that the transaction took place in the year 1999 and the liability is one barred by limitation under the general law of limitation was not accepted by the courts below. It was found that under Ex.P2, letter dated 05.09.2000 acknowledged by accused, the accused admitted is liability under Exs.P3 and P4 and issued two post dated cheques for Rs.9,00,000/- which on presentation were returned for the reason "insufficient funds".

(iii) As Exs.P3 and P4 were returned, the accused, in the presence of mediators, issued another cheque bearing No.273899 dated 12.03.2004 in a sum of Rs.12,50,000/- which was also returned unpaid for the reason "insufficient funds". Hence, from the above, the respondent complainant has proved this case.

(iv) Having preferred an appeal against the judgment of the trial court, the accused has failed to appear before the appellate court. Besides, issuance of a non bailable warrant and the return thereof for the reason "Whereabouts are not known", learned counsel for petitioner has also reported no instructions from the accused. Hence, the appellate court has held that the accused was not interested in proceeding with the case and he has filed the appeal only to protract the proceedings.

This Court finds no error in the judgment under challenge.

6. This Criminal Revision is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional Sessions Judge,
Pondicherry.
2. The Judicial Magistrate,
Mahe.

+1cc to Ms.Raja Shrinivas, Advocate, S.R.No.67773

SVN(CO)
RS(09/02/2017)

Crl.R.C.No.1365 of 2016

सत्यमेव जयते

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