

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2016

CORAM:

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

Crl.R.C.No.17 of 2016

and

Crl.M.P.Nos.115 and 408 of 2016

R.Ramamurthy

S/o.Ramakrishnappa

.. Petitioner/Appellant/Accused

vs.

Jayalakshamma

W/o.Late Rajanna

.. Respondent/Respondent/Complainant

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the judgment of learned Additional District and Sessions Judge, Hosur, Krishnagiri District, passed in C.A.No.29 of 2013 on 10.10.2015 confirming the judgment of learned Judicial Magistrate, Fast Track Court, Hosur, passed in S.T.C.No.120 of 2011 on 28.09.2012.

For Petitioner : Mr.R.Jayaprakash

For Respondent : Mr.M.Krishnamoorthy

O R D E R

This revision arises against two concurrent judgments of Courts below convicting petitioner for offence u/s.138 of the Negotiable Instruments Act and sentencing him to 6 months S.I. and directing him to pay a sum of Rs.2,10,000/- towards compensation i/d 1 month S.I.

2. The case of the prosecution is that the complainant and appellant/accused were friends and at the request of the appellant/accused the complainant foreclosed a fixed deposit and issued a cheque drawn on the State Bank of Mysore, Bagalur branch, which was encashed by the accused. Towards repayment he issued cheque No.105856 dated 01.12.2005, which upon presentation was returned unpaid, after the initial return, the appellant/accused requested that the cheque be represented. The complainant represented the same on 20.01.2006 and on return

thereof unpaid caused statutory notice and following the procedure envisaged in u/s.138 of the Negotiable Instruments Act, preferred a complaint. The complaint case was tried in S.T.C.No.120 of 2011 on the file of learned Judicial Magistrate, Fast Track Court, Hosur.

3. Before trial Court, respondent examined herself and marked 9 exhibits. On the side of defence, 2 witnesses were examined and 2 exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 28.09.2012, rendered a finding of conviction and sentenced petitioner/accused to 6 months S.I. and directed him to pay a sum of Rs.2,10,000/- towards compensation i/d 1 month S.I. There against, petitioner/accused preferred C.A.No.29 of 2013 on the file of learned Additional District and Sessions Judge, Hosur, Krishnagiri District, which came to be dismissed under judgment dated 10.10.2015. Hence, this revision.

4. Learned counsel for petitioner submitted that Courts below have failed to note that the burden on the accused u/s. 139 of Negotiable Instruments Act was light and that the complainant had not established means to lend a sum of Rs.2,00,000/-. Learned counsel further contended that Courts below had failed to appreciate that the receipt towards repayment marked as Ex.D.1 as also the evidence of D.W.1 and 2 in proper perspective. On doing so, Courts below would have entered a finding of acquittal.

5. We have heard the learned counsel for respondent on the above submissions.

6. The receipt marked as Ex.D.1 has been forwarded for expert opinion and the report has gone against the genuineness thereof. Courts below have appreciated the position that while D.W.1 had in cross admitted that the respondent/complainant had not issued any receipt on receiving the payment of alleged date 01.06.2006 the evidence of D.W.2 was to the effect that the complainant had issued a receipt at her house at Bagalur, which receipt had been brought by the accused himself and was signed by the complainant and the witnesses. D.W.2 has admitted that he did not know where the receipt was prepared by the accused nor the contents thereof. The Trial Court on perusing Ex.D.1 receipt has found that the same informs of having been issued towards settlement of the cheque dues and the complainant had promised to withdraw the case before Court. Trial Court reasoned that none of the defence witnesses had deposed that upon receiving the payment the complainant had undertaken to withdraw the case and contrarily has deposed that the complainant had misplaced the cheque and undertaken to return it after the same was traced. Trial Court also considered the position that the appellant/accused had appeared before it on 08.02.2007 pursuant

to issue of warrant against him by it on 03.07.2006 and in such circumstance, it was difficult to understand how the accused and witnesses had knowledge of pendency of the case and approached the complainant on 01.06.2006 with the cheque amount towards effecting payment and obtaining Ex.D.1 receipt.

7. Courts below have rightly appreciated the falsity of the defence case and the report of expert informing that Ex.D.1 receipt was not in the hand of the complainant further substantiates findings of Courts below.

8. The Criminal Revision Case shall stand dismissed. Connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

- 1.The Additional District and Sessions Judge,
Hosur, Krishnagiri District.
- 2.The Judicial Magistrate,
Fast Track Court, Hosur.
3. The Section officer
Criminal Section
High Court, Madras

सत्यमेव जयते

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SP(02/02/2018)

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