

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07-09-2016

(Orders reserved on 20.07.2016)

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Cr1.R.C.No.354 of 2016

G.G.Sundaresan

... Petitioner/Appellant/Accused

Vs

H.Batcha

... Respondent/Respondent/Respondent

PRAYER: Criminal Revision case filed under Section 397 & 401 of Cr.P.C., against the Judgment passed in C.A.No. 65 of 2012 on the file of Additional District and Sessions Judge, Chengalpattu, dated 22.12.2015 for confirming the order passed in C.C.No. 6 of 2012 dated 06.10.2012 on the file of Judicial Magistrate, Fast Track Court, Alandur.

For Petitioner : No appearance

For Respondent : Mr.A.Illangovan

O R D E R

The Criminal Revision Case is directed against the Judgment passed in C.A.No. 65 of 2012 on the file of Additional District and Sessions Judge, Chengalpattu, dated 22.12.2015 for confirming the order passed in C.C.No. 6 of 2012 dated 06.10.2012 on the file of Judicial Magistrate, Fast Track Court, Alandur.

2. The facts leading to this revision are as follows:-

The revision petitioner/accused has approached the respondent and received loan of Rs.8,60,000/- with a promise to repay the amount within a period of one month and after the demand by the respondent, the revision petitioner/accused has issued a cheque, bearing No. 000028, dated 07.10.2011 for a sum of Rs.8,60,000/- drawn on City Union Bank, Ramapuram, E.C., Chennai - 89 and when the same was presented for collection, it

was returned as insufficient funds in the accused account. Thereafter, the respondent has issued a statutory notice to the revision petitioner/accused. Even after the receipt of notice, the petitioner/accused has not paid the amount. Hence, a complaint has been lodged by the respondent under Section 138 of the Negotiable Instrument Act. The trial Court after hearing the arguments on either side and analysing the materials and documents, came to a conclusion and has passed a Judgment finding the petitioner/accused guilty and sentenced him to undergo six month simple imprisonment and also to pay a fine of Rs.5,000/-, in default to undergo one month simple imprisonment. Against the Judgment, the revision petitioner/the accused has preferred Crl.A.No. 65 of 2012 before the learned Additional District and Sessions Judge, Chengalpattu and the learned Additional District and Sessions Judge, Chengalpattu, after perusing the entire materials, confirmed the Judgment and conviction passed by the trial Court and dismissed the appeal. Against which, the revision petitioner has preferred this revision before this Court.

3. When the case was listed for arguments, the learned counsel for the petitioner has not appeared and there was no representation on her behalf. The learned counsel for the respondent was present. This Court perused the entire records produced on the side of the revision petitioner and heard the arguments of the respondent and pronounced the following order:

4. In the grounds of criminal revision, it is mainly contended that the Court below, without considering the entire facts and circumstances and the evidence adduced on the side of accused, came to a wrong conclusion that the Appellate Judge has failed to consider the date of issue of cheque and the date of cheque presented, not proved. The learned Judge has failed to distinguish Ex.R-2 and P3. The Appellate Judge has wrongly come to a conclusion that the signature admitted by the petitioner during the course of examination marked as Ex.P1 and P2 are his signature. The Court below came to a wrong conclusion and hence, it is prayed that the Criminal Revision Case may be allowed by setting aside the order of the Court below.

5. The learned counsel for the respondent mainly contended that in this case, the trial Court after analysing the entire facts and circumstances, convicted the accused and there is no illegality or infirmity in the order of the trial Court. Hence, the revision has to be dismissed.

6. In this case, on the side of the complainant PW-1 was examined and Exs. P1 to P-8 were marked and on the side of the accused, RW-1 was examined and Ex.R-1 marked is the police

complaint dated 09.02.2012; Ex.R-2 is the letter to City Union Bank dated 20.12.2010; and Ex. R-3 is the another police complaint dated 05.01.2011. Except the above documents, there is no other documents adduced on the side of the present petitioner/accused. In this case, the complainant himself examined as PW-1 and he stated that the revision petitioner/accused has borrowed Rs.8,60,000/- from him and the amount was demanded by the complainant from the revision petitioner/accused. The revision petitioner/accused has issued the cheque dated 07.10.2011 for Rs.8,60,000/- and when the cheque was presented for collection, it was returned as insufficient funds. Hence, notice was issued, which was received by the revision petitioner. But the revision petitioner/accused was sent a evasive reply, which was marked as Ex.P-6.

7. In this case, the defence of the revision petitioner is that the cheque was misplaced. He never borrowed any loan amount from the respondent/complainant and they were doing partnership car business and the respondent/complainant had separated from the business during the year 2010. The cheques were misplaced and he has also issued Advocate notice to the Bank to stop payment and lodged a complaint before the police station stating that the cheques were misplaced and Ex.D-1 is the receipt and the same was obtained by threat and coercion and the cheques were issued in the year 2010 and it was presented for lapse of more than one year and it shows that the respondent/complainant has not come forward with the true case.

8. In this case, according to the respondent/complainant, the cheque was issued on 07.10.2011. Per contra, the learned counsel for the petitioner would submit that they were separated from their business during the year 2010 and the cheque was misplaced during that time. But the present cheque was only dated 07.10.2011 and the present police complaint was filed on 01.01.2011 and 09.02.2011. But there is no document to show that complaint before the police station was lodged on a particular date. Further the revision petitioner has not denied the signature found in the cheque and the revision petitioner has not denied the issuance of cheque. The only argument of the revision petitioner is that the cheque was misplaced, but it is not the case of the revision petitioner that the signed cheque is misplaced in his business. Further, since the accused has not denied the signature found in the cheque and not taken any steps to compare the signature in the cheque with his admitted signature to get an expert opinion.

9. In view of the above facts and circumstances, the trial Court has correctly found that the cheque was issued by the

revision petitioner to the respondent/complainant for a sum of Rs.8,60,000/- for proper consideration and the cheque was returned as insufficient funds and the offence against the present revision petitioner under Section 138 of the Negotiable Instrument Act is clearly proved beyond all the reasonable doubt.

10. This Court finds no illegality or infirmity in the order passed by the learned Additional District and Sessions Judge, Chengalpattu and the same does not warrant any interference by this Court.

11. In the result, the Criminal Revision Case stands dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsg

To

- 1.The Additional District and Sessions Court,
Chengalpattu.
- 2.The Judicial Magistrate,
Alandur.
- 3.Do Through The Chief Judicial Magistrate,
Chengalpattu.

+1cc to Mr.G.V.Sridaran, Advocate, S.R.No.50676
+1cc to Mr.A.Illangovan, Advocate, S.R.No.50701

Cr1.R.C.No.354 of 2016

KSJ(CO)
CA(06/10/2016)

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