

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2016

(Orders Reserved on : 29.06.2016)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.356 of 2016

V.Vasudevan Petitioner/Accused

Vs.

V.Gajapathy Respondent/Complainant

Prayer: Criminal Revision Case filed under Sections 397 & 401 of the Code of Criminal Procedure, to set aside the conviction imposed in the judgment dated 07.12.2010 made in C.C.No.219 of 2008 on the file of the learned Judicial Magistrate, Dharapuram, and the same was modified by judgment dated 18.02.2016 made in C.A.No.64 of 2011 on the file of the Additional District Court No.3, Dharapuram.

For Petitioner : Mr.M.Guruprasad
For Respondent : No Appearance

- - - - -

ORDER

This Criminal Revision Case is directed against the judgment passed by the learned Judicial Magistrate, Dharapuram, dated 07.12.2010 in C.C.No.219 of 2008 and the same was modified by judgment dated 18.02.2016 in C.A.No.64 of 2011 by the learned Additional District Judge, Additional District Court No.3, Dharapuram.

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

The revision petitioner/accused had borrowed a sum of Rs.2,00,000/- from the respondent/complainant for his business purposes on 08.03.2008 and issued a cheque bearing No.542460. The respondent/complainant deposited the said cheque for collection on 08.04.2008 at State Bank of India, Dharapuram branch and the said cheque was returned on 09.04.2008 with a memo containing an endorsement 'insufficient funds'. Thereafter, the respondent/complainant had issued a notice on 05.05.2008. Even though the revision petitioner/accused had received the said notice on 06.05.2008, he has not paid any amount and also he did not send any reply to the said notice. Hence, the complainant has filed a

complaint under Section 138 of the Negotiable Instruments Act before the learned Judicial Magistrate, Dharapuram, and the learned Judicial Magistrate, Dharapuram, after considering the entire evidence and after perusing the documents, convicted the petitioner herein/accused under Section 138 of the Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for one year and imposed a fine of Rs.5,000/-, in default, to undergo 2 months simple imprisonment. As against the said conviction and sentence, the accused had preferred an appeal in CrI.A.No.64 of 2011 before the learned Additional District Judge, Additional District Court No.3, Dharapuram. The learned Additional District Judge, after considering the entire evidence and records, confirmed the conviction imposed by the trial Court and modified the sentence to three months simple imprisonment and to pay a fine of Rs.5,000/-. As against the said order, the present criminal revision case is preferred by the petitioner/accused before this Court.

3. The learned counsel for the petitioner would mainly contend that both the Courts below had failed to note that absolutely there is no evidence on record to prove the transaction between the parties. Further, both the Courts below had failed to note the fact that the respondent/complainant has failed to prove his case that he lent a sum of Rs.2,00,000/- to the petitioner/accused. The complaint is very vague and bereft of particulars. The notice issued by the complainant also was not properly served on the petitioner/accused. The Courts below have erred in convicting and sentencing the petitioner/accused. Hence, the judgments passed by the trial Court and the Appellate Court have to be set aside.

4. When the matter was taken up for hearing, the respondent has not chosen to appear either in person or through counsel.

5. This Court perused the records. On a reading of the entire papers, it is clearly proved that the revision petitioner/accused had borrowed a sum of Rs.2,00,000/- from the respondent/complainant for his business purposes on 08.03.2008 and issued a cheque bearing No.542460. The above fact was proved by the evidence of P.W.1 and the same is corroborated by P.W.2. When the complainant presented the said cheque for collection on 08.04.2008 at State Bank of India, Dharapuram branch, it was returned on 09.04.2008 with an endorsement 'insufficient funds'. Therefore, the respondent/complainant had issued a notice on 05.05.2008 and even though the revision petitioner/accused had received the said notice on 06.05.2008, he has not paid any amount and also he did not send any reply to the said notice. Hence, the argument of the learned counsel for the petitioner that proper notice was not sent to the accused is liable to be rejected. Further, in this case, P.W.1 and P.W.2 specifically stated

that the accused had borrowed a sum of Rs.2,00,000/- from the complainant and issued a cheque in favour of the complainant and when the said cheque was presented for collection, it was returned as 'insufficient funds'.

6. In view of the above facts and circumstances of the case, both the trial Court and the Appellate Court found the revision petitioner/accused guilty under Section 138 of the Negotiable Instruments Act and sentenced him as already stated above. Therefore, there is no infirmity or illegality in the orders passed by both the Courts below. This Court finds no reason to interfere with 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.

7. In the result, this Criminal Revision Case is dismissed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Additional District Judge,
Additional District Court No.3,
Dharapuram.
- 2.-do- thro'The Chief Judicial magistrate,
Dharapuram.
3. The Judicial Magistrate,
Dharapuram.
- 4.-do- thro'The Principal District Judge,
Tiruppur.

+1 cc to Mr.M.Guruprasad,advocate,sr.48300.

gj(co)
krd 21/9

Cr1.R.C.No.356 of 2016