

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.08.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.972 of 2016

and

Crl.MP.No7762 of 2016

P.R.Gopal

.. Petitioner

Vs.

S.Balasubramanian

.. Respondent

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to call for the records and set aside the conviction and sentence passed by the learned Principal Sessions Judge, Namakkal made in Crl.A.No.36 of 2015, dated 29.06.2016 confirming the order passed by the learned Judicial Magistrate (FTC), Tiruchengode made in STC.No.161 of 2013 dated 05.08.2015.

For Petitioner : Mr.C.Venkatesalu.

For Respondent : Mr.S.Viswanathan.

ORDER

The criminal revision petition is directed against the judgment of conviction and sentence passed by the learned learned Principal Sessions Judge, Namakkal made in Crl.A.No.36 of 2015, dated 29.06.2016 confirming the order of the learned Judicial Magistrate (FTC), Tiruchengode made in STC.No.161 of 2013 dated 05.08.2015 .

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

The complainant is the respondent in the present revision petition. The complaint is filed under Section 138 of the Negotiable Instruments Act before the Judicial Magistrate, Fast Track Court, Thiruchengode and the case was taken up on file in STC.No.161 of 2013, stating that the petitioner has borrowed a sum of Rs.5,00,000/- on 12.10.2012 and agreed to return the same within a period of three months and issued a cheque dated 12.01.2013 bearing Cheque No.118369. In the meanwhile, the accused requested the complainant to present the cheque by second week of February, the complainant presented the cheque for collection on 11.02.2013, the same was returned on 13.02.2013 with an endorsement "funds insufficient". Again the

cheque was represented on 19.03.2013, the same was also returned for insufficient funds in the account. Thereafter, the complainant issued legal notice on 15.04.2013 and notice was returned, hence the complainant preferred private complaint under Section 138 of the Negotiable Instruments Act.

3. After giving opportunity to both sides and considering the evidence and documents adduced on both sides, the trial Court comes to a conclusion that the accused/revision petitioner was found guilty under Section 138 of the Negotiable Instruments Act and convicted him to undergo simple imprisonment for six months and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one month. Against the said order of conviction and sentence, the accused preferred criminal revision before the Principal Sessions Judge, Namakkal in CrI.A.No.36 of 2015. The lower appellate Court confirmed the order passed by the trial Court. Aggrieved over the same, the accused preferred the criminal revision before this Court.

4. The learned counsel for the petitioner mainly contended that the Courts below failed to see that the cheque was not presented within the time prescribed under Section 138 of Negotiable Instruments Act. Firstly, the cheque was dishonoured on 15.02.2013, for which the complainant has not issued any notice. Again the cheque was represented for collection and legal notice was issued. The trial Court failed to note that the complainant has not proved that the revision petitioner borrowed a sum of Rs.5,00,000/- from the complainant. Originally, the cheque was issued to one Perumal for the purpose of getting financial help to settle the debts due to Tamil Nadu Industrial Corporation, the trial Court failed to consider this aspect and erroneously come to the conclusion. The complainant failed to examine one Perumal, the trial Court failed to look into the documents adduced on the side of the revision petitioner. The complaint filed under Section 138 of the Negotiable Instruments Act has to be dismissed. The trial Court failed to appreciate the blank cheque was signed by revision petitioner without any consideration and prays to set aside the judgments of the Courts below and allow the revision petition.

5. Per contra, the learned counsel appearing for the respondent would contend that the trial Court after appreciating the entire facts and circumstances comes to a correct conclusion and there is no illegality or infirmity in the order passed by the Courts below. The revision petition is liable to be dismissed. Since, the petitioner admitted that the cheque was issued to one Perumal, the same was not proved on the side of the petitioner and prays to dismissed the revision filed by the petitioner.

6. Heard the rival submissions made on both sides and perused the records and the written arguments of both the revision petitioner and the respondent.

7. The learned counsel for the revision petitioner admitted the signature found in the dishonoured cheque is that of the accused/revision petitioner, but the learned counsel contended that the cheque was issued to one Perumal along with four other blank cheques, the cheque was subsequently filled up by the respondent/complainant and utilised for filing of this case. The learned counsel further stated that the cheque was issued to one Perumal, but failed to produce any sufficient materials to show that blank cheque was issued to one Perumal. The revision petitioner has taken summons to examine the said Perumal as defence witness, but he is not able to examine him and no satisfactory explanation have been put forth for non examination of Perumal. Since, the Perumal was not examined on the side of the revision petitioner, the blank cheque issued by the revision petitioner was misused by the complainant cannot be accepted and the arguments of the learned counsel for the revision petitioner has to be rejected.

8. The further contention of the learned counsel for the revision petitioner submitted, that PW1 in his cross examination admitted that he has no income and employment for more than 3½ years, hence, he has no source to lend money to the revision petitioner. PW1 deposed in the same cross examination that he already earned money and he has sufficient money available with him on that date to lend money to the revision petitioner is acceptable one and the said argument is also liable to be rejected.

9. Further, in this case, the accused/revision petitioner admitted the signature in the cheque, but failed to prove that the said cheque was issued to one Perumal. The presumption under section 139 of the Negotiable Instruments Act can be taken into consideration and it is for the accused to place the materials to rebut the presumption. Hence, in this case, the cheque was not issued to proper consideration is also liable to be rejected. It is further contended that the name of the accused is Rajagopal and in the complaint it was wrongly mentioned as P.R.Gopal, per contra DW2 in his cross examination specifically admitted that his name was also called as P.R.Gopal.

10. The revision petitioner specifically contended that he handed over the present cheque along with four blank cheque to one Perumal and Perumal signed on the record slip of the cheque book. In the Ex.R4 - cheque book record slip, the said Perumal signed and received the cheques, it is also admitted that it is not usual practice to obtain signature from the person who

received the cheque in the cheque book record slip, hence, the said practice in this case is not believable, further in this case the said Perumal was not examined.

11.The learned counsel for the revision petitioner send Exs.D8 and D9 notice to the Perumal demanding the cheque etc., Exs.D8 and D9 are issued only after filing of the present complaint. This Court is of the view they are only created for the purpose of the case and the same cannot be accepted. Exs.D8 and D9 notice clearly stated there is blank cheque was issued during February 2013. But in Ex.D4 record slip it was stated that the cheque was issued to Perumal only on 30.09.2012, there are so much contradictions in the Exs.D4, D8 and D9, the revision petitioner has not explained about the above said contradiction to this Court.

12.The learned counsel for the petitioner relied on the judgment of this Court reported in (2016) 1 MLJ (Cr1) 552 - S.Balamani V. Vijayashanthi, the said authority cited on the side of the revision petitioner is not applicable to the facts of the present case.

13.The learned counsel for the respondent in support of his contention relied on the following judgments:-

- (i)2015-2-LW 569 - M/s.Ajeet Seeds Ltd., V. K.Gopala Krishnaiah
- (ii)2005 (4) CTC 30 - P.T.Thomas V. Thomas Job and
- (iii)(2015) 1 LW (Cri) 720 - Jayalakshmi Textiles and others V. S.K.Kolandasamy

14.In view of the considered view, the arguments of the learned counsel for the revision petitioner, that the petitioner issued blank cheque to one Perumal was misused by the complainant and foisted criminal case is liable to be rejected. The complainant has sufficient funds to give money under the disputed cheque and this Court is of the view that the cheque was issued for consideration by the present revision petitioner to the complainant. On entire perusal of the records, this Court finds no illegality or infirmity in the order passed by the Court below and the same does not warrant any interference by this Court.

15.In the result, the criminal revision stands dismissed. Consequently, connected miscellaneous petition is closed.

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Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Principal Sessions Judge, Namakkal.

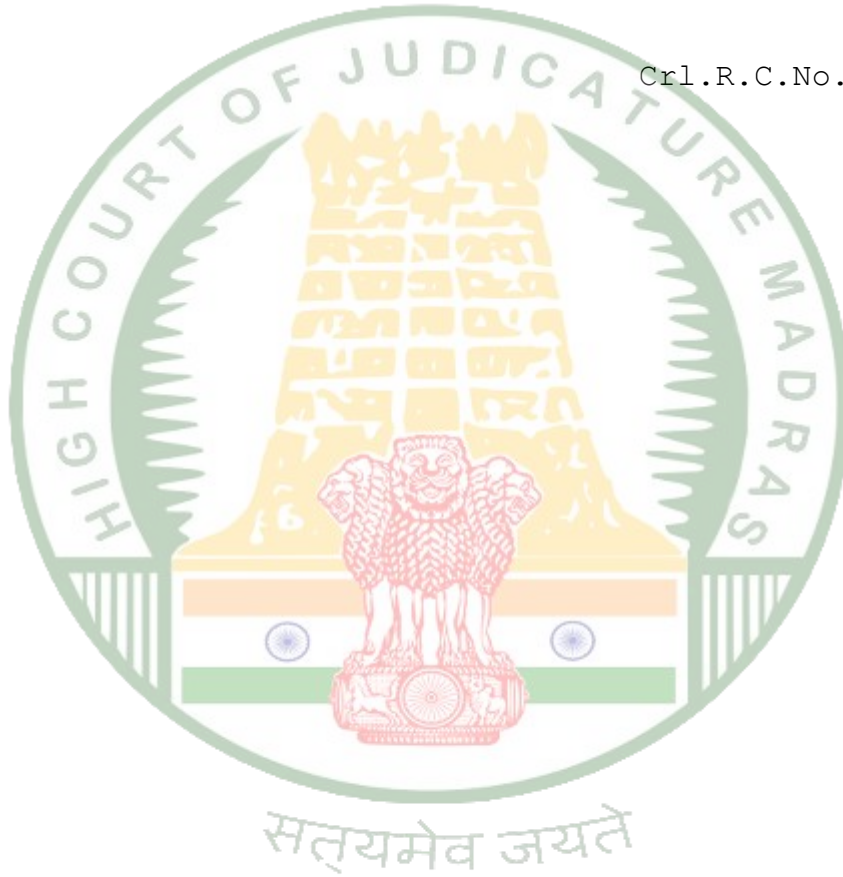
2. The Judicial Magistrate, Fast Track Court,  
Tiruchengode.

+ 1 cc to Mr.C.Venkatesalu, Advocate Sr 46490

+ 1 cc to M/s.DASS & VISWA ASSOCIATES, SR 46546

KR/3/9/16

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