

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2017

CORAM:

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

Crl.R.C.No.46 of 2017

and

Crl.M.P.Nos.536 and 537 of 2017

M.Mahadevaiya

S/o.Munisamy

.. Petitioner/Appellant

vs.

M.Baskar

S/o.Munusamy

.. Respondent/Complainant

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the judgment of learned Additional District Judge, Krishnagiri, passed in C.A.No.13 of 2016 on 19.10.2016 confirming the judgment of learned Judicial Magistrate, Fast Track Court, Hosur, passed in S.T.C.No.81 of 2015 on 21.12.2015.

For Petitioner : Mr.N.Sureka

For Respondent : Mr.O.Padma Prakash

ORDER

This Court has reserved orders in this revision on 28.02.2017. Thereafter, the matter was listed on two occasions. Today, the matter is listed under the caption 'for orders'. When the matter is taken up, it is represented that the petitioner/accused has not effected payment as agreed. Hence, this Court proceeds to pass orders on merits.

2. 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 compensation of Rs.4,00,000/- to the de facto complainant.

3. Respondent moved a prosecution informing that the petitioner borrowed a sum of Rs.4,00,000/- from the complainant and cheque bearing No.104027 dated 24.12.2014 drawn on Axis Bank Limited, Hosur Branch, in a sum of Rs.2,00,000/- and cheque bearing No.182469 dated 24.12.2014 drawn on State Bank of India, Hosur ADB Branch, in a sum of Rs.2,00,000/- stood issued to him

by petitioner towards repayment of borrowing, which upon presentation were returned unpaid for the reason "insufficient funds". Respondent/complainant caused statutory notice and following the procedure envisaged under Section 138 of the Negotiable Instruments Act, a complaint had been filed.

4. Before the trial Court, respondent examined five witnesses and marked twelve exhibits. Three witnesses were examined on behalf of the defence and four exhibits were marked.

5. On appreciation of materials before it, trial Court, under judgment dated 21.12.2015 in S.T.C.No.81 of 2015, convicted petitioner and sentenced him to 6 months S.I. and compensation of Rs.4,00,000/- to the de facto complainant. There against, petitioner preferred C.A.No.13 of 2016 on the file of learned Additional District Judge, Krishnagiri. Appellate Court, under judgment dated 19.10.2016, dismissed the appeal. There against, the present revision has been filed.

6. Heard learned counsel for petitioner and learned counsel for respondent. Perused the materials on record.

7. In convicting the petitioner, Courts below have found that though it was the case of petitioner/accused that he borrowed loan from the respondent/complainant, that he has repaid the loan amount of Rs.4,00,000/- by way of deposit in the respondent's bank account and that the cheque which was given as security has been misused towards foisting a false case against him, petitioner/accused has not produced any document to prove that he has repaid the amount. The next contention of petitioner/accused that no statutory notice has been served on him has been rejected on the reasoning that Ex.P5, legal notice, clearly informs that the same was returned for the reason 'door locked' and 'intimation given'. Having refused to receive the notice, it is not open to petitioner/accused to claim that no statutory legal notice has been served on him. When once the borrowal of money and issuance of cheque has not been disputed, it is for the petitioner/accused to prove repayment by producing documentary evidence, which he has failed to do. On the above reasoning and for other reasons, Courts below arrived at a finding that the petitioner/accused has failed to prove his case and accordingly, convicted him. This Court finds no error in the judgments under challenge.

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

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gm

To

- 1.The Additional District Judge,
Krishnagiri.
- 2.The Chief Judicial Magistrate Krishnagiri
- 3.The Judicial Magistrate,
Fast Track Court,
Hosur.
- 4.The Principal Sessions Judge, Krishnagiri

+1 cc to Mr.O.PadmaPrakash Advocate sr 42916
+1 cc to Mr.C.Samivel Advocate sr 43116

Cr1.R.C.No.46 of 2017

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