IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2017

CORAM:

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

Crl.R.C.No.873 of 2014

R.Krishnakumar
S/o.Ranganathan ... Petitioner/Accused

vs.

T.A.Ameed Abdul Khader
S/o.Mohideen ... Respondent/Complainant

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the judgment of learned V Additional Sessions Judge, Chennai, passed in C.A.No.232 of 2013 on 05.07.2014 modifying the judgment of learned Metropolitan Magistrate, Fast Track Court IV, George Town, Chennai, passed in C.C.No.4961 of 2009 on 11.10.2013.

For Petitioner : Mr.M.Mohammed Rafi

For Respondent : Mr.P.Chinnaraaj

O R D E R

This revision arises against the judgment of learned V Additional Sessions Judge, Chennai, passed in C.A.No.232 of 2013 on 05.07.2014 modifying the judgment of learned Metropolitan Magistrate, Fast Track Court IV, George Town, Chennai, passed in C.C.No.4961 of 2009 on 11.10.2013.

2. Respondent/complainant moved a prosecution informing that the petitioner borrowed a sum of Rs.21,86,000/- from him and a cheque bearing No.470987 dated 12.01.2009 drawn on HDFC Bank, Kottivakkam, stood issued to him by petitioner towards repayment of borrowing, which upon presentation was returned unpaid for the reason “insufficient funds”. When the same was intimated to petitioner, he has issued 7 other cheques and the same were also returned unpaid for the very same reason. Respondent/complainant caused statutory notice and following the procedure envisaged under Section 138 of the Negotiable Instruments Act, a complaint had been filed.

3. Before the trial Court, respondent examined himself and marked eighteen exhibits. None were examined on behalf of the defence nor were any exhibits marked.

4. On appreciation of materials before it, trial Court, under judgment dated 11.10.2013, convicted petitioner and sentenced him to 2 years S.I. and was directed to pay compensation in a sum of Rs.21,86,000/- to respondent/complainant. There against, petitioner preferred C.A.No.232 of 2013 on the file of learned V Additional Sessions Judge, Chennai. Appellate Court, under judgment dated 05.07.2014, while confirming the finding of conviction, modified the sentence to one of compensation in a sum of Rs.21,86,000/- to the complainant i/d 1 year S.I. There against, the present revision has been filed.

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

6. Learned senior counsel for petitioner submits that though the signature of petitioner in eight cheques in respect of which the case in C.C.No.4961 of 2009 on the file of learned Metropolitan Magistrate, Fast Track Court IV, George Town, Chennai, has been filed, is admitted, the other particulars have been fancifully filled up by respondent. As against the contention in the statutory notice, respondent, in the cross-examination, had stated that the amount of Rs.21,86,000/- was borrowed on several occasions. Respondent, having not made any mention of execution of demand promissory notes by petitioner as security for loan amount, has spoken to one demand promissory note in chief-examination, but, in cross, has informed that the petitioner executed five promissory notes. The same have not been produced before the trial Court. Respondent has also failed to produce the income-tax returns in proof of means.

7. Learned counsel for respondent submits that having received the statutory notice u/s.138 of the Negotiable Instruments Act, petitioner had not caused any reply. The trial was dragged on between 2009 and 2013 by petitioner on the pretext of effecting settlement. Producing copies of income-tax returns, learned counsel submits that from year to year, the same reflect the dues owed by petitioner.

8. Considering the rival submissions and being of the view that production of income-tax returns of respondent towards establishing his means would render possible a just finding in the case, this Court would set aside the judgment under challenge and consequently, the finding of conviction arrived by

Court below in C.A.No.232 of 2013 shall stand set aside. The matter shall now stand remitted back to the appellate Court for recording further evidence u/s.391 Cr.P.C. towards marking the income tax returns of respondent. Appellate Court shall afford the petitioner to effect cross-examination there regards. Appellate Court shall dispose of C.A.No.232 of 2013 on its file within two months from the date of receipt of this order. This Court records the undertaking made on behalf of petitioner that he will duly co-operate with the conduct of proceedings within the time stipulated by this Court. Any protraction of proceedings may be viewed seriously.

The Criminal Revision Case, accordingly, is ordered.

02.02.2017

"FOR BEING SPOKEN TO"

This matter having been listed under the caption "for hearing spoken to" on Monday the 6th day of February 2017 pursuant to the order of this Court dated 02/02/2017 and made herein in the pursuance of the aforesaid Counsels on the eitherside, the Court made the following order;

"Today, the matter is listed under the caption "For being Spoken to" clarified".

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gm

To

1.The V Additional Sessions Judge,
Chennai.

2.The Metropolitan Magistrate,
Fast Track Court IV,
George Town,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

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