

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T. SELVAM

Criminal Revision No.1216 of 2015
and
M.P.No.1 of 2015

M.Sekar ..Petitioner/Accused

Vs

P.Prabakaran ..Respondent/Complainant

Prayer:- Criminal Revision filed under Sections 397 and 401 Cr.P.C., to set aside the judgment dated 13.10.2015 made in Crl.Appeal No.50 of 2015 on the file of the II Additional District and Sessions Judge, Salem, in confirming the judgment dated 15.12.2014 made in S.T.C.No.18 of 2013, on the file of the Judicial Magistrate (Fast Track Court), Omalur, Salem District.

For Petitioner : Mr.C.Prabakaran
For Respondent : Mr.B.Vasudevan

O R D E R

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 3 months S.I. and directing him to pay compensation of Rs.1,50,000/- within a month from the date of judgment.

2. Respondent/complainant moved prosecution informing that petitioner/accused borrowed a sum of Rs.2,50,000/- from him and towards repayment thereof, cheque bearing No.000047 dated 10.07.2013 drawn on Karur Vysya Bank, Pallipalayam Branch, Sankari, stood issued to him, which upon presentation was 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.

3. Before the trial Court, respondent/complainant examined himself as P.W.1 and Mr.Ganesh Kumar, Branch Manager, Karur Vysya Bank as P.W.2 and marked seven documents. On the side of accused, one Murugesan was examined as D.W.1 and one exhibit was marked as Ex.D.1

4. On appreciation of materials before it, the trial Court, under judgment dated 15.12.2014, convicted the petitioner and sentenced him to 3 months S.I. and directed him to pay compensation of Rs.1,50,000/- within a month from the date of judgment (15.12.2014). The appeal preferred by petitioner in C.A.No.50 of 2015 on the file of learned II Additional District Sessions Judge, Salem, came to be dismissed under judgment dated 13.10.2015. Hence, this revision.

5. Heard learned counsel for petitioner and learned counsel for respondent and perused the records.

6. In convicting the petitioner, the Courts below have found follows:

(i) The contention of the accused that the cheque has not been given towards discharge of liability has been negated on reasoning that once the signature in the cheque has not been disputed, it could be presumed that the cheque was given towards discharge of liability.

(ii) Though it has been contended that the father-in-law of the complainant had conducted a chit transaction, the accused was a member and the cheque given towards balance payment has been misused by the complainant, the Courts below have found, that to establish such contention, the accused has not examined himself.

(iii) The accused has examined one Murugesan as D.W.1, who deposed that he had no knowledge of the chit transactions said to have been conducted by the father-in-law of the complainant.

(iv) The contention of the accused that the matter was settled at Lok Adalat and a sum of Rs.1,35,000/- has been agreed towards settlement and that the complainant has to approach proper Court for executing the said order and it was improper on the part of the trial Court to deal with the case, again, has been rejected on the reasoning that no order copy of the settlement arrived at between the parties has been produced and that the Lok Adalat itself has returned the matter back to the Court since there was no settlement.

7. For the said reasons Courts below, arrived at finding on conviction. This Court finds no error in the judgment under challenge. Hence, the Criminal Revision Case is dismissed. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The II Additional District and Sessions Judge,
Salem

2.The Judicial Magistrate
(Fast Track Court),
Omalur,
Salem District.

+1cc to Mr.C. Prabakaran, Advocate, S.R.No.3368

+1cc to Mr.B. Vasudevan, Advocate, S.R.No.3348

CrI.R.C.No.1216 of 2015

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