

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.1454 of 2016

&

Crl.M.P.Nos.12627 and 12628 of 2016

M.Rajendran

... Petitioner

Vs.

K.Sampath Kumar

... Respondent

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the judgment of learned II Additional District and Sessions Judge, Tiruppur passed in C.A.No.99 of 2015 on 12.07.2016 confirming the judgment of learned Judicial Magistrate (Fast Track Court) Tiruppur passed in C.C.No.32 of 2013 on 06.10.2015.

For Petitioner : Mr.K.Mayilsamy

For Respondent : No Appearance

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 1 year S.I. and fine of Rs.1,000/- i/d 15 days S.I.

2. Respondent/complainant moved a prosecution informing that petitioner/accused borrowed a sum of Rs.1,00,000/- from him and towards repayment thereof, cheque bearing No.079422 dated 10.04.2012 drawn on Federal Bank, Tiruppur, 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 two witnesses and marked seven exhibits. Petitioner/accused examined one witness and marked two exhibits.

4. On appreciation of materials before it, the trial Court, under judgment dated 06.10.2015, convicted the petitioner and sentenced him to 1 year S.I. and fine of Rs.1,000/- i/d 1 month S.I. The appeal preferred by petitioner in C.A.No.99 of 2015 on the file of learned II Additional District and Sessions Judge, Tiruppur, came to be dismissed under judgment dated 12.07.2016. Hence, this revision.

5. Heard learned counsel for petitioner. There is no representation for respondent.

6. Learned counsel for petitioner submits that the cheque giving rise to the case was issued in respect of a borrowing of Rs.1,00,000/- and interest thereon. Learned counsel submits that the date of borrowing alleged by the respondent was 29.03.2011 and the rate of interest agreed upon according to the respondent/complainant is 2%. The principal and interest due as on 10.04.2012, the date of cheque, would only be Rs.1,24,732/- and therefore the cheque No.079422 dated 10.04.2012 drawn on Federal Bank, Tiruppur, for Rs.1,25,130/- did not inform the correct amount due and as such the dishonor thereof would not give rise to cause of action.

7. The issuance of the cheque for the sum of Rs.1,25,130/- has not been disputed. It is now the petitioner's case that if interest is calculated at 2% on the sum 1,00,000/- from the date of borrowing, the actual amount due on the date of cheque would be Rs.1,24,732/- i.e. below the cheque amount. Learned counsel places reliance on the judgment of this Court in Angu Parameswari Textiles (P) Ltd. V. Sri Rajam & Co. [decided on 24.01.2001] wherein has been observed thus:

"4.... This is a case where the cheque amount was more than the amount due on the date when the cheque was presented. The presentation of the cheque and subsequent dishonour alone raises a cause of action. When the cheque cannot be said to be drawn towards the discharge of either the whole or part of any debt or liability, Section 138 is not attracted.

In the instant case, given the admitted position that the cheque was issued by the petitioner for the sum reflected therein, this Court cannot countenance the submission now put forth. However, considering the facts and circumstances of this case, this Court modifies the sentence of 1 year S.I. to one of

4 months S.I. Fine and default sentence imposed by Trial Court and confirmed by Appellate Court shall hold good. With the above observation, this Criminal revision petition is dismissed. Connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The II Additional District and Sessions Judge, Tiruppur

2.-do-Thro'The Principal Sessions Judge, Tiruppur

3.The Judicial Magistrate (Fast Tack Court) Tiruppur

4.-do-Thro The Chief Judicial Magistrate
Tiruppur

+1 cc to Mr.K.Myilsamy Advocate sr 1480

Crl.R.C.No.1454 of 2016

vd(co)
aa10/03/2017

सत्यमेव जयते

WEB COPY