

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.07.2017

Coram:

The Honourable Mr. Justice C.T. Selvam

Crl.R.C. No. 703 of 2010

Mr. P. Ganesh
S/o Prabha Gounder

...Petitioner/Appellant/Accused

Versus

M. Palanisamy
S/o Muthu Gounder

...Respondent/Respondent/Complainant

This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure praying to set aside the judgment dated 19.05.2010 passed in C.A.No.34 of 2010 on the file of the Additional District and Sessions Judge Fast Track Court No.II, Coimbatore confirming the judgment dated 09.02.2010 passed in C.C.No.61 of 2009 on the file of the Judicial Magistrate No.II, Coimbatore, convicting the petitioner under Section 138 of Negotiable Instruments Act, and sentencing him to undergo simple imprisonment for one year and imposing a fine of Rs. 5,000/- i/d of payment of fine further period of 3 months of S.I

For Petitioner : Mr. S. Vadivel Murugan,
Legal Aid Counsel

For Respondent : M/s. L. Mouli

सत्यमेव जयते
O R D E R

This Criminal Revision Case arises against the judgment dated 19.05.2010, passed by learned Additional District and Sessions Judge Fast Track Court II, Coimbatore in C.A.No.34 of 2010 confirming the judgment passed by learned Judicial Magistrate No.II, Coimbatore in C.C.No.61 of 2009 dated 09.02.2010.

2. Petitioner faced prosecution for offence u/s. 138 of the Negotiable Instruments Act in C.C.No.61 of 2009 on the file of learned Judicial Magistrate No.II. On appreciation of materials before it, Trial Court under judgment dated

09.02.2010, convicted the petitioner and sentenced him to 1 year S.I and fine of Rs.5,000/- i/d 3 months S.I. There against, petitioner preferred C.A.No.34 of 2010 on the file of Additional District and Sessions Judge Fast Track Court No.II, which came to be dismissed under judgment dated 19.05.2010. Hence this revision.

3. Heard learned Legal Aid Counsel appearing on behalf of the petitioner and learned counsel appearing for the respondent.

4. Learned counsel for petitioner submitted that Courts below have erred in arriving at a finding of conviction without calling for expert opinion on the signature of the cheque. Learned counsel submits Courts below ought to have done so. Courts below have held against petitioner for the reason that petitioner had not entered the defence box and has not moved any application for examination of the cheque by an expert. Such reasoning was erroneous, in that, it was always open to Courts below to exercise powers under Section 73 Cr.P.C if, on a careful perusal of the signature in the cheque and that on the promisory note, Ex.P.1., a doubt arose. Courts below have reasoned that petitioner/accused has merely denied his signature on the cheque without in any manner seeking to justify his contention. This Court is unable to accept such contention. That the cheque was returned unpaid owing to insufficient balance in an account held by him is not disputed. This Court finds no error in the judgments under challenge.

5. Accordingly, this Criminal Revision Petition is dismissed.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1. The Additional District and Sessions Judge,
Fast Track Court No.II,
Coimbatore.

2. The Judicial Magistrate No.II,
Coimbatore.

3. The Public Prosecutor,
High Court,
Madras.

+ 1 cc to Mr. S. Vadivel Murugan, Advocate, SR.53597

+ 1 cc to M/s.L.Mouli, Advocate, SR.54285

Cr1. R.C. No. 703 of 2010

SVI (CO)
NR 17/11/2017



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