



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.08.2018
CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

WEB COPY

Crl.R.C(MD)No.173 of 2018
and
Crl.M.P.(MD) Nos.2334 and 2335 of 2018

D.Sundar Singh : Petitioner/Appellant/
Accused

Gnanaiyan : Respondent/Respondent/
Complainant

PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to allow this criminal revision and call for the records pertaining to Judgment passed by learned Sessions Judge, Kanyakumari at Nagercoil dated 27.02.2018 in C.A.No.33 of 2014 confirming judgment of learned Principal District Munsif cum Judicial Magistrate, Eraniel in S.T.C No.3427 of 2006 dated 11.06.2013 and set aside the same.

For Petitioner : M/s.D.Christenson Jugunu
For Respondent : Mr.T.Layapathi Roy

ORDER

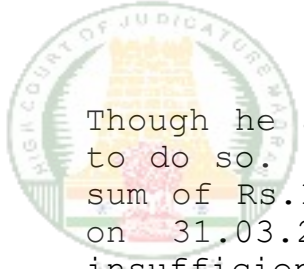
This Criminal Revision case is filed against the judgment dated 27.02.2018 in C.A.No.33 of 2014 passed by the learned Sessions Judge, Kanyakumari at Nagercoil confirming the judgment passed by the learned Principal District Munsif cum Judicial Magistrate, Eraniel in S.T.C No.3427 of 2006 dated 11.06.2013.

2.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

3.This criminal revision case is against the concurrent findings of the courts below. The matter is arising under Section 138 of Negotiable Instruments Act.

4.The brief facts of the case involving in the criminal revision case run as below:-

One Gnanaiyan, the respondent herein, is the complainant in S.T.C.No.3427 of 2006 on the file of the learned Principal District Munsif cum Judicial Magistrate, Eraniel. According to the <https://hcservices.ecourts.gov.in/hcservices/> Complainant, D.Sundar Singh, the revision petitioner herein, borrowed a sum of Rs.1,50,000/- from the complainant on 06.01.2006.



Though he assured to repay the amount within two months, he failed to do so. To discharge the said debt, he has issued a cheque for a sum of Rs.1,50,000/- drawn at Indian overseas Bank, Mankarai Branch on 31.03.2006. On presentation, the cheque bounced due to insufficiency of fund and stoppage of payment. Statutory notice dated 24.07.2006 was issued and thereafter, complaint was filed under Section 138 of Negotiable Instruments Act.

5.To prove the case, the complainant has examined himself as P.W.1 and eight exhibits were marked. Whereas on the side of the accused, three witnesses were examined and five exhibits were marked.

6.The trial Court on considering the material evidence and the law, has held that the cheque was issued to discharge the legally enforceable debt. The evidence of D.W.3, who discloses about the earlier transaction and the compromise memo, would indicate that the cheque was knowingly given to discharge the said debt. Having found the accused guilty of offence under Section 138 of Negotiable Instruments Act, the trial Court has convicted and sentenced him to undergo six months simple imprisonment and to pay a sum of Rs.1,50,000/- being the cheque amount as compensation in default to undergo simple imprisonment for two months. Aggrieved by that, the revision petitioner/accused has preferred an appeal before the Court of Sessions, Kanyakumari at Nagercoil in C.A.No.33 of 2014. The appellate Court after considering the grounds of appeal, dismissed the same as groundless. Against the concurrent findings, the accused has preferred the criminal revision case.

7.A perusal of the grounds of revision, does not disclose any illegality or infirmity in the orders of the Courts below. The Courts below have held that the accused has issued a cheque for a legally enforceable debt and the defence taken by him, does not rebut the presumption caused upon him.

8.The learned counsel appearing for the petitioner would submit that at the time of admitting the criminal revision case, for granting stay of operation of judgment, he has deposited a sum of Rs.1,50,000/- on 06.04.2018 in S.T.C.No.3427 of 2006, as directed by this Court and the same has been invested in a bank as per the Court direction. He has filed an affidavit to that effect and has also stated that in the affidavit the said amount of Rs.1,50,000/- to the credit of S.T.C.No.3427 of 2006, along with accrued interest may be taken as compensation to the complainant and the imprisonment portion may be modified.

9.Heard the learned counsel for the respondent on the said submission.

10.Considering the said submission, this Court is of the opinion that the accused/revision petitioner having come forward to pay the money awarded as compensation, the imprisonment portion may be modified.



11. In the result, the Criminal Revision case is partly allowed. The orders of the Courts below are confirmed insofar as the compensation and the imprisonment of six months simple imprisonment is set aside. The respondent herein is permitted to withdraw the sum of Rs.1,50,000/- and the interest accrued so far which lies in the deposit of S.T.C.No.3427 of 2006 on the file of the learned Principal District Munsif cum Judicial Magistrate, Eraniel. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Sessions Judge, Nagercoil,
Kanyakumari District.

2. The Principal District Munsif
cum Judicial Magistrate,
Eraniel.

+1CC to Mr.T.Layapathi Roy, Advocate, SR.No. 81350

+1CC to Mr.D.Christenson Jugunu, Advocate, SR.No. 81368

Cr1.R.C (MD) No.173 of 2018
30.08.2018

CP
ES/RP/SAR 1/12.09.2018/3P/5C