



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Cr1.R.C(MD)No.81 of 2018

U.Sivaramakrishnan

: Petitioner

Vs.

A.Esakkiraj

: Respondent

PRAYER: Revision is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records to the Judgment dated 29.01.2018 in C.A.No.6 of 2017 passed by the learned Second Additional District Sessions Court, Tuticorin, which confirmed the judgment of conviction and the sentence passed by the learned Fast Track (Judicial Magistrate Level) Court, Tuticorin in C.C.No.5 of 2015 dated 30.12.2016 and set aside the same.

For Petitioner : Mr.B.Rajesh Saravanan

For Respondent : Mr.A.Thiruvadikumar

ORDER

This criminal revision case is arising out of the private complaint filed under Section 138 of Negotiable Instruments Act.

2.The case of the complainant, who is the respondent herein, is that on 09.05.2014 the revision petitioner received Rs.5,00,000/- as lease amount for a property. But later came to the light that for the very same property the accused has received lease amount from seven other persons also and thereafter, police complaint was lodged against this revision petitioner to repay the debt. He gave a cheque for Rs.5,00,000/- on 18.11.2014 drawn at Allahabad Bank, Thoothukudi. When the cheque was presented for collection, the same was returned for insufficiency of fund. Hence, after issuing statutory notice, the complaint was filed.

3.To prove the case, the complainant has examined himself as P.W.1. The lease deed against which he received Rs.5,00,000/-, is marked as Ex.P.1. The cheque issued by the accused is marked as Ex.P.2. The written memo, legal notice, postal receipt and the cover returned as unclaimed, are marked as Ex.P.3 to Ex.P.6 respectively. On the side of the defence, three exhibits were marked.



4.The trial Court on appreciation of the evidence found that the cheque was issued for discharge of the enforceable debt and the accused is liable to be convicted. Accordingly, the Trial Court sentenced him to undergo one year simple imprisonment and directed to pay a sum of Rs.5,00,000/-, the cheque amount as compensation. Aggrieved by that, the accused has preferred appeal in CrI.A.No.6 of 2017 on the file of the Second Additional District and Sessions Court, Tuticorin. The lower appellate Court has confirmed the sentence and conviction. Hence, the present criminal revision case has been filed.

5.It is contended by the learned counsel for the revision petitioner that the othi deed (Ex.P.1) was never acted upon. The accused did not receive Rs.5,00,000/- as lease amount from the complainant. Though the complainant has failed to prove passing of consideration, the Courts below have failed to appreciate the said contention raised by the accused and also failed to take judicial note of the fact that the cheque was obtained from the accused at the instance of the police, based on the false complaint given by the respondent.

6.This Court on considering the evidence let in by the respective parties, does not find any merits in the submission made by the revision petitioner. Ex.P.1 othi deed clearly shows that a sum of Rs.5,00,000/- has been received by the revision petitioner and it has been admitted by the accused that thereafter the property has not been occupied by the complainant. Therefore, he is bound to repay the money. The subject cheque is issued to discharge the said debt. When statutory notice issued by the complainant, the revision petitioner has not received it and therefore it has been returned as unserved. Under the said circumstances, the strong presumption under Section 138 of Negotiable Instruments Act, the Court below has held the accused guilty.

7.It is also contended by the learned counsel appearing for the revision petitioner that for the very same amount the complainant has filed a civil suit for principal as well as interest and the same is pending and also submitted that pursuant to the condition imposed by this Court he has deposited Rs.5,00,000/- out of which the complainant has already withdrawn Rs.3,00,000/-.

8.Considering the above said facts, this Court while confirming the conviction, modifies the sentence as below:-

A sum of Rs.3,00,000/- has already been deposited and withdrawn by the complainant, shall be the compensation in lieu of sentence of one year simple imprisonment and compensation of Rs.5,00,000/-. The balance sum of Rs.2,00,000/- which is deposited in C.C.No.5 of 2015 is permitted to be withdrawn by the revision petitioner/accused.



9.The parties are at liberty to contest the suit and compensation awarded in this case shall be adjusted in the final decree any, which is to be passed in the suit. Any observation made by this Court or the Courts below as far as the dishonour of cheque is concerned, such observation shall not prejudice the Civil Court while deciding the merits of the plaint filed by the respondent herein.

10.In the result, this Criminal Revision Case is partly allowed. Bail bonds, if any, executed by the petitioner shall stand cancelled.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar (CS-III)

To

1.The Fast Track (Judicial Magistrate Level) Court,
Tuticorin.

2.The Second Additional District and Sessions Court,
Tuticorin.

3.The Chief Judicial Magistrate, Tuticorin.

COPY TO

The Section Officer, (2 COPIES)
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC To MR.A.THIRUVADI KUMAR, Advocate SR. NO.93125

+1 CC To MR.B.RAJESH SARAIVANAN, Advocate SR. NO. 92875

ORDER MADE IN
Cr1.R.C (MD) No.81 of 2018
29.10.2018

CP

TR/SV/SAR-III (22.11.2018) 3P 8C