



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 11.10.2018
DELIVERED ON : 23.10.2018
CORAM:

WEB COPY

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C(MD)Nos.196, 231, 239, 243, 255 and 309 of 2018
and
Crl.M.P(MD)Nos.2587, 2588, 2982, 2983, 3094, 3095, 3166, 3167, 3437,
3438, 4274 and 4275 of 2018

Crl.R.C(MD)No.196 of 2018:

S.Sasikumar : Petitioner/Accused

Vs.

K.Chelladurai : Respondent/Complainant

PRAYER: Criminal Revision Case is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, against the Judgment of conviction passed by the learned Sessions Judge, Kanyakumari District at Nagercoil in C.A.No.66 of 2014, dated 09.10.2017, confirming the Judgment passed by the learned Judicial Magistrate (Fast Track Court) No.1, Nagercoil in C.C.No.253 of 2012, dated 31.10.2014.

Crl.R.C(MD)No.231 of 2018:

S.Sasikumar : Revision Petitioner/Appellant/Accused

Vs.

K.Chelladurai : Respondent/Respondent/Complainant

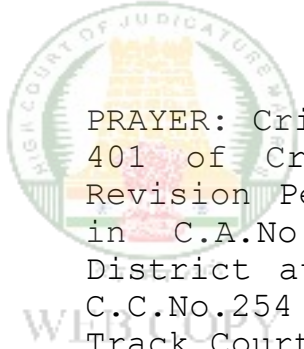
PRAYER: Criminal Revision Petition filed under Section 397 read with 401 of Cr.P.C., to call for the records, allow this Criminal Revision Petition and set aside the Judgment of conviction imposed in C.A.No.62 of 2014 on the file of the Sessions Court, Kanyakumari District at Nagercoil dated 09.10.2017, confirming the Judgment in C.C.No.256 of 2012 on the file of the Judicial Magistrate (Fast Track Court) No.I, Nagercoil, dated 31.10.2014.

Crl.R.C(MD)No.239 of 2018:

S.Sasikumar : Revision Petitioner/Appellant/Accused

Vs.

K.Chelladurai : Respondent/Respondent/Complainant



PRAYER: Criminal Revision Petition filed under Section 397 read with 401 of Cr.P.C., to call for the records, allow this Criminal Revision Petition and set aside the Judgment of conviction imposed in C.A.No.65 of 2014 on the file of the Sessions Court, Kanyakumari District at Nagercoil dated 09.10.2017, confirming the Judgment in C.C.No.254 of 2012 on the file of the Judicial Magistrate (Fast Track Court) No.I, Nagercoil ,dated 31.10.2014.

Cr1.R.C(MD)No.243 of 2018:

S.Sasikumar : Revision Petitioner/Appellant/Accused

Vs.

K.Chelladurai : Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Section 397 read with 401 of Cr.P.C., to call for the records, allow this Criminal Revision Petition and set aside the Judgment of conviction imposed in C.A.No.61 of 2014 on the file of the Sessions Court, Kanyakumari District at Nagercoil dated 09.10.2017, confirming the Judgment in C.C.No.255 of 2012 on the file of the Judicial Magistrate (Fast Track Court) No.I, Nagercoil ,dated 31.10.2014.

Cr1.R.C(MD)No.255 of 2018:

S.Sasikumar : Revision Petitioner/Appellant/Accused

Vs.

K.Chelladurai : Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Section 397 read with 401 of Cr.P.C., to call for the records, allow this Criminal Revision Petition and set aside the Judgment of conviction imposed in C.A.No.64 of 2014 on the file of the Sessions Court, Kanyakumari District at Nagercoil dated 09.10.2017, confirming the Judgment in C.C.No.251 of 2012 on the file of the Judicial Magistrate (Fast Track Court) No.I, Nagercoil ,dated 31.10.2014.

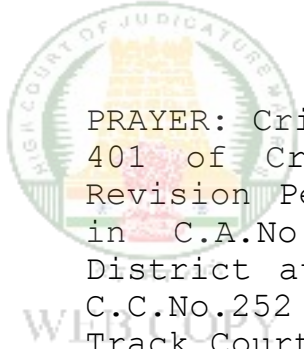
Cr1.R.C(MD)No.309 of 2018:

S.Sasikumar : Revision Petitioner/Appellant/Sole Accused

Vs.

<https://hcservices.ecourts.gov.in/hcservices/>

K.Chelladurai : Respondent/Respondent/Complainant



PRAYER: Criminal Revision Petition filed under Section 397 read with 401 of Cr.P.C., to call for the records, allow this Criminal Revision Petition and set aside the Judgment of conviction imposed in C.A.No.63 of 2014 on the file of the Sessions Court, Kanyakumari District at Nagercoil dated 09.10.2017, confirming the Judgment in C.C.No.252 of 2012 on the file of the Judicial Magistrate (Fast Track Court) No.I, Nagercoil, dated 31.10.2014.

For Petitioner : Mr.C.K.M.Appaji

For Respondent : Mr.M.P.Senthil

COMMON ORDER

The above six revision cases are preferred by one Sasikumar aggrieved by the conviction and sentence imposed by the learned Judicial Magistrate (Fast Track Court) No.1, Nagercoil, in six different calendar cases and the same being confirmed by the learned Sessions Judge, Kanyakumari District at Nagercoil in six appeals preferred by him.

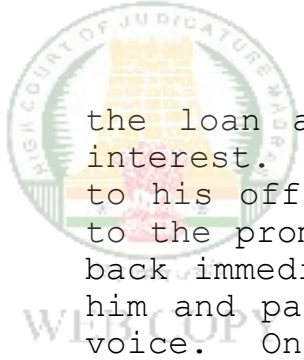
2.The respondent Chelladurai is common in all the revision cases and he is the complainant in the calendar cases. Since parties are common and the facts are also almost common in all the revision cases, common Judgment is passed. The parties are described as per their description and ranking as found in the respective cases.

3.Chelladurai (complainant) served in Indian Army as Junior Commission Officer and got retired on 01.04.2011. The accused is a politician and a businessman in Chidambaram, Cuddalore District. The complainant and the accused are known to each other for several years. Knowing that the complainant had received his retirement benefits and having cash in his hands, the accused sought for loan and received a sum of Rs.32,00,000/- in instalments between 06.04.2011 and 29.06.2011. The accused also executed a promissory note acknowledging the receipt of the money and promised to repay the amount on demand with interest at the rate of 12% per annum. Money was paid in the presence of one Sivaraman, a common friend of complainant and the accused. To discharge the debt of Rs.32,00,000/- towards principal and Rs.1,50,000/- towards interest, the accused gave six cheques for a total sum of Rs.33,50,000/- bearing different dates enable him to honour the same. But, on presentation of those cheques for collection, they were all returned for insufficiency of funds in the account of the accused. The statutory notice for payment of cheque amount was issued to the accused. Though, the accused received the notice, he did not come forward either to pay the amount or to reply within the statutory period of fifteen days. Hence, the complainant has filed the following six complaints against the accused:



Sl No	Case No.	Cheque No.	Date	Amount	Date of presentation	Date of statutory notice
1.	C.C.No .253/2012	000003, Bank of India, Chidambaram Branch.	09.12.2011	Rs.5,00,000/-	25.02.2012	21.03.2012
2.	C.C.No .256/2012	000012, Bank of India, Chidambaram Branch.	21.11.2011	Rs.10,00,000/-	27.02.2012	21.03.2012
3.	C.C.No .254/2012	000004, Bank of India, Chidambaram Branch.	09.12.2011	Rs.5,00,000/-	25.02.2012	21.03.2012
4.	C.C.No .255/2012	000005, Bank of India, Chidambaram Branch.	30.11.2011	Rs.3,50,000/-	25.02.2012	21.03.2012
5.	C.C.No .251/2012	000001, Bank of India, Chidambaram Branch.	21.11.2011	Rs.5,00,000/-	25.02.2012	31.03.2012
6.	C.C.No .252/2012	000002, Bank of India, Chidambaram Branch.	09.12.2011	Rs.10,00,000/-	25.02.2012	21.03.2012

4. Before the Trial Court, the accused has contended that he is carrying on real estate business and one Sivaraman of Kanyakumari was known to him through his business contacts. He used to frequently visit Chidambaram. Being his friend, he borrowed Rs.3,00,000/- from Sivaraman on 14.09.2008 and gave a promissory note in the name of Chelladurai, since Sivaraman requested to give a note in the name of Chelladurai. According to the accused, he in fact does not know who is Chelladurai at that point of time. As agreed, he paid Rs.3,000/- per month as interest for



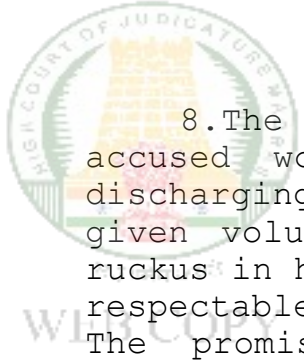
the loan amount. Sivaraman was regularly collecting the monthly interest. While so, on 20.11.2011, Chelladurai and Sivaraman came to his office at Chidambaram and told him that there is no witness to the promissory note executed by him and so, they need the money back immediately. When he pleaded that he did not have money with him and pay them immediately, they created ruckus by raising their voice. On hearing the commotion, the neighbours and his party-men came to the office and compromised them and at that time, he gave cheques signed, but unfilled with an understanding that the cheques should be presented for Rs.50,000/- each month for six months. With such specific understanding that the money he borrowed will be discharged in six monthly instalments, those cheques were issued. Contrary to the promise and mutual understanding, the complainant had presented two of the cheques on the very next day and the remaining cheques on the later dates.

5.The accused has contended that the neighbours know about the ruckus created by the complainant on 20.10.2011 at his office in Chidambaram. The accused while admitting the receipt of the statutory notice, immediately after receipt of the notice, he contacted Sivaraman and asked him why Chelladurai has presented the cheque filling it with higher amount than what he owed to him, for which, Sivaraman told him to come in person and pay Rs.3,00,000/- and settle the issue. So, he did not reply to the notice. Hence, the accused has pleaded that the cheque was misused by the complainant by filling huge amount than what he owe to him.

6.The Trial Court on considering the evidence of the complainant and the accused, has convicted the accused in all the complaints and uniform sentence has been passed to the effect that the revision petitioner/accused shall undergo 1 year rigorous imprisonment and to pay the respective cheque amounts as compensation. Aggrieved by the said conviction and sentence, the accused has preferred the following criminal appeals against the Judgment passed by the Trial Court in all the six calendar cases, before the learned Sessions Judge, Kanyakumari District at Nagercoil:

- | | | |
|-------------------------|---|------------------------|
| (i)C.C.No.256 of 2012 | - | C.A.No.62 of 2014; |
| (i)C.C.No.254 of 2012 | - | C.A.No.65 of 2014; |
| (iii)C.C.No.255 of 2012 | - | C.A.No.61 of 2014; |
| (iv)C.C.No.251 of 2012 | - | C.A.No.64 of 2014; |
| (v)C.C.No.252 of 2012 | - | C.A.No.63 of 2014; and |
| (vi)C.C.No.253 of 2012 | - | C.A.No.66 of 2014. |

7.On re-appreciation and reconsidering the evidence, the lower appellate Court has confirmed the conviction and sentence. Aggrieved by that, the present batch of revision cases are filed.



8.The learned counsel appearing for the revision petitioner/accused would submit that six blank cheques were issued for discharging of debt of Rs.3,00,000/- only. The cheques were not given voluntarily, but under force since the complainant created ruckus in his office at Chidambaram and . He being a politician and respectable person to avoid embarrassment, gave the cheques to him. The promissory note given by the accused in favour of the complainant dated 14.09.2008 would speak volume that the transaction between the complainant and the accused was only for Rs.3,00,000/-. Further the case of the complainant that the subject cheques were issued at Arun Lodge, Kottar, Nagercoil has been falsified by the self-contradiction elicited during the cross-examination of the complainant. Further it is proved through P.W.2 and P.W.3 that cheques were issued at Chidambaram on 20.11.2011.

9.The learned counsel appearing for the revision petitioner would further submit that the complainant, who just got retired as Junior Commission Officer, had no wherewithal to lend a sum of Rs.32,00,000/- between 06.04.2011 to 29.06.2011.

10.Also pointing out the portion of deposition of P.W.1, wherein he has stated that he could not recollect the dates on which he gave loan to the accused to a huge tune of Rs.32,00,000/-, the learned counsel appearing for the revision petitioner/accused would submit that the complainant has failed to prove his source to lend Rs.32,00,000/- and he failed to establish that the cheques were issued at Arun Lodge, Kottar, Nagercoil to discharge enforceable debt.

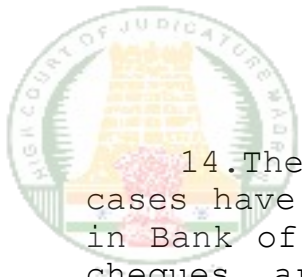
11.Per contra, the learned counsel appearing for the respondent/complainant would submit that the accused admits the issuance of cheques and the signature found in it. Sivaraman whom referred by the accused as witness for the said transaction has supported the case of the complainant. The self-serving evidence of the complainant's friend regarding meeting of Chelladurai and the accuse at Chidambaram, has not been found to be true by the Courts below, since it is only a make-belief statement by the accused.

12.It is also submitted by the learned counsel appearing for the respondent/complainant that the complainant has proved beyond doubt regarding issuance of cheque and enforceable debt. Neither the promissory note submitted by the accused or the evidence of the defence witnesses, rebut the presumption cast upon the accused. Hence, the learned counsel would submit that there is no merit in the revision cases and therefore, they are liable to be dismissed.

13.Point for consideration:

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Whether there is any error or illegality in the findings of the Courts below to interfere in the revision cases?"



14.The cheques which are subject matter of these six revision cases have been emanated from the account maintained by the accused in Bank of India, Chidambaram Branch. The signature found in these cheques are not denied by the accused. Existence of money transaction and some money he owed to the complainant are also accepted.

15.In defence, it is submitted by the revision petitioner that he does not owe Rs.33,50,000/- to the complainant. Further he also contends that the complainant has no wherewithal to advance Rs.32,00,000/- loan. For the second point, the complainant has produced his bank account and his wife bank account, wherein both have maintained sufficient funds almost tally with the cheque amounts during the period which the complainant alleged to have lent loan to the accused. It is true that the complainant could not recollect the exact dates and amounts which he lend to the accused. But the cheques issued by the accused and the amount found in the cheques, speaks for itself. The presumption that the cheques issued for enforceable debts cannot be easily shifted from the accused in the light of the admitted facts by the accused.

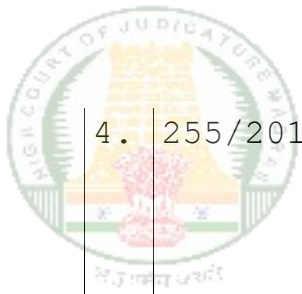
16.It is also to be taken note that a settlement deed executed by the accused father in favour of the accused, is in possession of the complainant and the same is marked as Ex.P.5. The accused is unable to explain how a title deed of his, went to the hands of the complainant. Whereas it is the case of the complainant that a security for the loan availed, the accused has sent the settlement deed through courier. In the light of the above fact, this Court finds that there is no point to interfere with the considered Judgments of the Courts below.

17.In the above circumstances, this Court is of the view that the conviction of the revision petitioner for issuing six cheques without sufficient fund, is justifiable. However, the sentence imposed on him requires modification in lieu of the plea and facts involved in these cases and accordingly, the sentence is modified as stated infra.

18.As a result, these Criminal Revision Cases are partly allowed. The Judgments of conviction passed against the revision petitioner/accused in C.C.Nos.253, 256, 254, 255, 251 and 252 of 2012, dated 31.10.2014 by the learned Judicial Magistrate (Fast Track Court) No.I, Nagercoil, as confirmed in C.A.Nos.66, 62, 65, 61, 64 and 63 of 2014, dated 09.10.2017 by the learned Sessions Judge, Kanyakumari District at Nagercoil, are confirmed. However, the sentence is modified as below:



Sl No	Calendar Case No.	Sentence imposed by the Trial Court	Criminal Appeal No.	Sentence imposed by the lower appellate Court	Crl. R.C (MD) No.	Sentence modified by this Court
1.	253/2012	1 year simple imprisonment and to pay a compensation of Rs.5,00,000 /-, in default, to undergo 1 month simple imprisonment .	66/2014	Confirmed	196/2018	6 months simple imprisonment and pay a compensation of Rs.50,000/- in default to undergo 2 months simple imprisonment.
2.	256/2012	1 year simple imprisonment and to pay a compensation of Rs.10,00,000 /-, in default, to undergo 1 month simple imprisonment .	62/2014	Confirmed	231/2018	6 months simple imprisonment and pay a compensation of Rs.50,000/- in default to undergo 2 months simple imprisonment.
3.	254/2012	1 year simple imprisonment and to pay a compensation of Rs.5,00,000 /-, in default, to undergo 1 month simple imprisonment .	65/2014	Confirmed	239/2018	6 months simple imprisonment and pay a compensation of Rs.50,000/- in default to undergo 2 months simple imprisonment.



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4.	255/2012	1 year simple imprisonment and to pay a compensation of Rs.3,50,000/-, in default, to undergo 1 month simple imprisonment.	61/2014	Confirmed	243/2018	6 months simple imprisonment and pay a compensation of Rs. 50,000/- in default to undergo 2 months simple imprisonment.
5.	251/2012	1 year simple imprisonment and to pay a compensation of Rs.5,00,000/-, in default, to undergo 1 month simple imprisonment.	64/2014	Confirmed	255/2018	6 months simple imprisonment and pay a compensation of Rs. 50,000/- in default to undergo 2 months simple imprisonment.
6.	252/2012	1 year simple imprisonment and to pay a compensation of Rs.5,00,000/-, in default, to undergo 1 month simple imprisonment.	63/2014	Confirmed	309/2018	6 months simple imprisonment and pay a compensation of Rs.50,000/- in default to undergo 2 months simple imprisonment.

Total compensation amount is Rs.3,00,000/-. The period of sentence shall run concurrently. The Trial Court is directed to secure the revision petitioner/accused and commit him to prison to undergo the remaining period of sentence. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/



To

1. The Sessions Judge,
Kanyakumari District at Nagercoil.

2. The Judicial Magistrate (Fast Track Court) No.1,
Nagercoil.

Copy To:

The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

+6CC to Mr.C.K.M.APPAJI, Advocate, SR.No.91846

+1CC to Mr.M.P.SENTHIL, Advocate, SR.No. 91348

COMMON ORDER MADE IN

CrI.R.C(MD)Nos.196, 231, 239, 243, 255 and 309 of 2018

and

CrI.M.P(MD)Nos.2587, 2588, 2982, 2983, 3094, 3095, 3166, 3167, 3437,
3438, 4274 and 4275 of 2018

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