



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2018

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
CRL.R.C. (MD)No.203 of 2018
and
Crl.M.P. (MD)Nos.2715 and 2716 of 2018

M.Selvam ... Petitioner

Vs

1.V.S.Subramoniam

2.The State of Tamilnadu,
Rep. by the Public Prosecutor,
Nagercoil.

... Respondents

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C, praying, to call for the records of the impugned judgment passed in C.A.No.26/2014 dated 31.08.2017 on the file of the Sessions Court, Kanniyakumari, Nagercoil confirming by the judgment passed in S.T.C.No.38 of 2013, dated 29.05.2014, on the file of the learned Judicial Magistrate (Fast Track Court) No.II, Nagercoil and set aside the same.

For Petitioner : Mr.K.Vamanan

For R1 : Mr.T.Selvakumaran

For R2 : Mr.A.Robinson

Government Advocate (Crl.side)

O R D E R

Heard the learned counsel for the revision petitioner/sole accused and the learned counsel for the first respondent/defacto complainant.

2.This revision petition is directed against the concurrent findings of the Courts below regarding the dishonor of cheque issued by the revision petitioner for a sum of Rs.3,00,000/- in favour of the first respondent. The cheque, dated 28.12.2012 drawn at Indian Overseas Bank, Thoivalai Branch, was issued to the first respondent to discharge his debt.

3.It is the case of the complainant that both are good friends. To meet the urgent family expense, the revision petitioner borrowed a sum of Rs.3,00,000/- and gave post dated cheque on 28.11.2012. However, when the cheque was presented for collection, it was bounced without fund. After issuing statutory notice, the complaint has been filed.

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4.Before the trial Court to substantiate his complaint, the



complainant was examined himself as P.W.1, the Assistant Manager of State Bank of India branch where the cheque presented was examined as P.W.2 and seven exhibits were marked. On behalf of the defence, the accused has mounted the witness box and denied liability to honor the cheque. He pleaded that he lost a bunch of cheques which has come to the hands of the complainant. He has misused and presented the cheque for the amount of his choice. The trial Court has rejected this defence for the reasons, if really the accused lost signed blank cheque, he would have approached the police station and given a complaint or at least, he would have said so immediately, after receiving the statutory notice. Having failed to do so, the said defence is only to escape from the criminal prosecution. Thus, the trial Court has found the revision petitioner guilty and has imposed sentence of three months R.I and a compensation of Rs.3,00,000/- being the cheque amount, payable to the defacto complainant within two months. Aggrieved by that, the accused has preferred the criminal appeal in C.A.No.26 of 2014 on the file of the learned Sessions Judge, Kanyakumari District, Nagercoil. On appeal the accused reiterating the defence projected by him before the trial Court. The Lower Appellate Court, after re-appraising the evidence has found that no error in the finding rendered by the trial Court. Hence, the lower Appellate Court dismissed the appeal and confirmed the judgment of the trial Court.

5.The learned counsel for the revision petitioner contends that the evidence of P.W.1 and P.W.2 are unreliable. He would further submit that they are interested witnesses and in the absence of independent witnesses, the Court below ought not to have held that the revision petitioner is guilty for the offence under Section 138 of the Negotiable Instrument's Act, 1988.

6.When the issuance of the signed cheque creates presumption of legally enforceable liability, the burden to rebut the presumption is on the accused. In this case, the first revision petitioner has taken the defence by denying the signature and later contended that the signature has been forged by the complainant and presented for encashment. Next, he has taken a plea that cheque was lost that has been misused by the complainant. For all these contentions, the revision petitioner has not let in any supportive evidence. The Courts below have rightly pointed out that if any person has really lost a signed cheque, he would have given a complaint or at least, he would have brought to the notice of the complainant immediately on the receipt of the statutory notice.

7.Further, one of the contentions raised by the revision petitioner is that P.W.1 and P.W.2 are interested witnesses and in the absence of any independent witness, the Court ought not to have found the revision petitioner guilty for the above said offence.

8.Both the Courts below have found the case of the complainant proved through reliable witness. The dishonor of the cheque presented, for want of fund as spoken by P.W.1 which was



corroborated by P.W.2 based on the bank record. Terming the Bank Manager-P.W.2 as an interested witness is baseless.

9. For the foregoing reasons, this Court finds no material to interfere with the order of the Courts below.

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10. At this juncture, the learned counsel for the petitioner would submit that the petitioner herein has undergone cardiac surgery recently and he may not be able to withstand incarceration, if some time is granted he will pay the cheque amount. To support his submission, medical records and medical bills pertaining to the revision petitioner are submitted.

11. Considering the said submission, this Court while confirming the judgment and decree of the Courts below, modify the sentence.

12. Accordingly, the revision petitioner is directed to pay the cheque amount namely, Rs.3,00,000/-, within a period of 60 days, in lieu of imprisonment. Failing which, the judgement of the appellant Court in C.A.No.26 of 2014 on the file of the Sessions Court, Kanniyakumari, Nagercoil, shall stand revived and deemed to be confirmed.

13. With the above modification, the Criminal Revision Case is disposed of. Consequently, Crl.M.P(MD)Nos.2715 and 2716 of 2018 are closed.

Sd/-

Assistant Registrar(WRITS)

/True Copy/

Sub Assistant Registrar(CS-I)

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To

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

2. The Sessions Judge, Kanniyakumari.

Copy to,

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

+1cc to Mr.K.Vamanan, Advocate in SR No.82970

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NM/PM/SAR I/31.10.18/3P/6C.