

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 01.10.2018

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CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C. (MD) No.54 of 2017
and
Crl.M.P. (MD) No.584 of 2017

K.Ganesan .. Petitioner/ Appellant /Respondent
Vs.

P.Kumarappan .. Respondent/ Respondent/Petitioner

Prayer: Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to call for the records pertaining to the C.A.No. 17 of 2013 dated 31.03.2016 on the file of the Sessions Judge, Sivagangai modifying the order passed in C.C.No.40 of 2012 dated 28.02.2013 on the file of the Judicial Magistrate (Fast Track Court) Karaikudi and set aside the same.

For Petitioner : Mr.N.Tamilmani

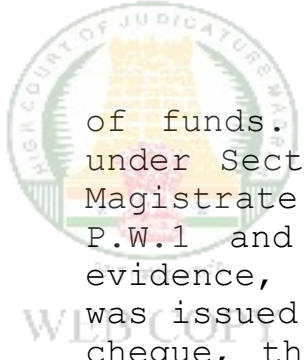
For Respondent : Mr.P.Saravana Kumar

O R D E R

This Revision Petition is preferred to call for the records pertaining to the C.A.No.17 of 2013 dated 31.03.2016 on the file of the Sessions Judge, Sivagangai modifying the order passed in C.C.No.40 of 2012 dated 28.02.2013 on the file of the Judicial Magistrate (Fast Track Court) Karaikudi.

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

3. The present revision case is arising out under Section 138 of the Negotiable Instruments Act. The brief case of the prosecution is that the revision petitioner/K.Ganesan herein, borrowed a sum of Rs.1,50,000/- (Rupees One Lakh Fifty thousand only) from the respondent/ P.Kumarappan and in order to discharge his debt, gave a cheque dated 20.11.2003. When the cheque was presented on 25.02.2004, the same was returned for insufficiency



of funds. After issue of statutory notice, complaint was filed under Section 138 of the Negotiable Instruments Act. The learned Magistrate who tried the case, after appreciating the evidence of P.W.1 and P.W.2 along with Exh.P1 to Exh.P5 and the defence evidence, as spoken by the accused, has held that the cheque was issued for an enforceable debt and having failed to honour the cheque, the revision petitioner is liable to be punished for the offence under Section 138 of the Negotiable Instruments Act.

4. Accordingly, the trial Court sentenced the revision petitioner to undergo two years Simple Imprisonment and compensation of Rs.3,00,000/- (Rupees Three Lakhs only) which is twice the cheque amount, failing which, default sentence of six months of Simple Imprisonment was ordered.

5. Aggrieved by the same, the revision petitioner has preferred an Appeal before the Sessions Judge, Sivagangai in Criminal Appeal No.17 of 2013. The Appellate Court after re-appreciating the evidence, confirmed the conviction and held that the subject cheque was issued by the revision petitioner to discharge the legally enforceable debt and therefore, the revision petitioner is liable to be convicted.

6. However, the Appellate Court modified the sentence imposed by the trial Court to the effect that the revision petitioner/accused has to pay compensation of Rs.3,00,000/- within a period of six months from the date of order. The present revision petition has been filed challenging the said sentence imposed upon the revision petitioner by the Appellate Court.

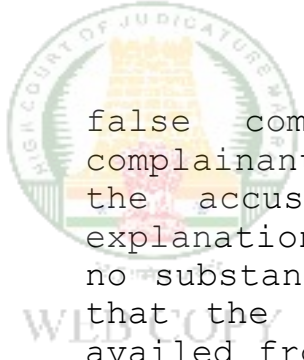
7. The points raised in the revision petition are as follows:-

- (i) the complainant has not proved the place, in which the accused issued the cheque;
- (ii) date on which the cheque was issued and
- (iii) whether the cheque was actually issued to discharge any enforceable debt.

8. While admitting the revision petition, this Court has passed a conditional order to deposit Rs.2,00,000/- (Rupees Two lakhs only) to the credit of C.C.No.40 of 2012, on the file of the learned Judicial Magistrate (Fast Track Court), Karaikudi. Accordingly, the same has been deposited.

9. **Point for consideration:** Whether the judgment of the Court below is in consonance with law and fact?

The respondent herein admitted the issuance of cheque but according to him, the cheque was issued to one Ramachandran, son of [Name], as security for a loan of Rs.30,000/- (Rupees Thirty thousand only) and same was cleared long back. However, the blank cheque given has been misused by the complainant by filing a



false complainant. However, the factum as spoken by the complainant and the documents in the light of the defence taken by the accused did not have the force of probabalising the explanation given by the accused for issuance of the cheque. Since no substantial evidence has been let out by the accused to prove that the subject cheque was issued for a loan of Rs.30,000/- availed from Ramachandran, son of the complainant, the Court below rejected the explanation and this Court is of the opinion that it has been rightly done by the Courts below.

10. Now, the point that remains to be answered is whether compensation awarded by the trial Court is excessive. Since the sentence imposed has been set aside, the compensation of twice the cheque amount has been confirmed by the Appellate Court. It is the contention of the revision petitioner that Rs.2,00,000/- which has been deposited pursuant to the orders passed by the Court in Cr.M.P.(MD) No.584 of 2017 dated 12.02.2018 shall be considered as compensation instead of Rs.3,00,000/-.

11. On cumulative assessment of the facts of the case, this Court is of the opinion that the compensation amount fixed by the Appellate Court shall be reduced to Rs.2,00,000/- (Rupees Two Lakhs only) and the complainant/ respondent herein, shall withdraw that money towards the compensation awarded. The money which has been already deposited by the revision petitioner / accused in the trial Court in C.C.No.40 of 2012, on the file of the learned Judicial Magistrate (Fast Track Court), Karaikudi shall be permitted to be withdrawn by the revision petitioner/complainant.

12. Accordingly, the revision petition is partly allowed with a direction of modification of the compensation component from Rs.3,00,000/- to Rs.2,00,000/- with liberty to the complainant to withdraw the same. Consequently, connected CrI.M.P. (MD) No.584 of 2017 is closed.

sd/
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1) The Sessions Judge,
Sivagangai.

2) The Judicial Magistrate,
Fast Track Court,
Karaikudi.



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

+1cc to Mr.N.Tamil Mani, Advocate in SR.No. 88016

+1cc to Mr.P.Kalaiyarasi Bharathi, Advocate in SR.No. 87997

sts

DS/RP/SAR3/31.10.2018/4P/6C

Order in
Crl.R.C.(MD)No.54 of 2017
01.10.2018