



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2018

WEB COPY

CORAM:

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

Crl.R.C.(MD)No.574 of 2016

S.Nallaperumal

... Petitioner

**Vs.**

1. S.Krishnamoorthy  
represented by his son  
K.Selvan @ Kumari Selvan

2. State represented by  
The Public Prosecutor,  
Nagercoil,  
Kanyakumari District.

... Respondents

**PRAYER:** Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the judgment made in C.A.No.08 of 2013 dated 29.04.2016 on the file of Principal District and Sessions Court, Kanyakumari District at Nagercoil confirming the judgment made in C.C.No.27 of 2012 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level) No.II, Nagercoil dated 26.12.2012.

|                |                                         |
|----------------|-----------------------------------------|
| For petitioner | : Mr.C.Muthursaravanan                  |
| For R1         | : Mr.C.T.Perumal                        |
| For R2         | : Mr.A.Robinson,<br>Government Advocate |

**ORDER**

Heard the learned counsel for the revision petitioner and the learned counsel for the respondents.

2.It is a case arising under Section 138 of Negotiable Instruments Act. Both the Courts below have held the revision petitioner guilty of the offences of issuance of cheque for a sum of Rs.5,00,000/- without sufficient fund and not honouring the same despite statutory notice.



3. The main ground of attack made by the revision petitioner herein is that the cheque was issued in favour of one Krishnamoorthy who initially filed the complaint but later he appointed his son Kumariselvan as a power of attorney and through him, he attempted to conduct the case. That petition was objected by the revision petitioner / accused. Pending disposal of that petition, Krishnamoorthy died and thereafter, the legal heir of Krishnamoorthy namely Kumariselvan is continuing the case.

4. Under Section 302 of Cr.P.C., the trial Court ought not to have entertained this petition. By entertaining this petition, a person who has no privity of contract had continued prosecution. Therefore, the conviction and sentence imposed by the Court below is erroneous.

5. The next point contented by the revision petitioner is that the legal heir of the complainant have not produced any document to show the source of Rs.5,00,000/- given to the accused as loan on 19.10.2009.

6. Per contra, the learned counsel for the second respondent submitted that after the death of Krishnamoorthy an application to implead the legal heir of Krishnamoorthy and continue the prosecution through the power agent, was filed and the same was allowed after due notice.

7. The next contention raised by the revision petitioner herein is that, the complainant has not disclosed the source to lend a sum of Rs.5,00,000/-. When there is no evidence to support the case of the complainant that on 19.10.2009, Rs.5,00,000/- was advanced to the accused and pursuant to that Ex.P.1, the cheque dated 31.12.2009, was issued by the accused, the Court below ought not to have convicted the petitioner.

8. Per contra, the counsel appearing for the respondent / complainant would submit that the cheque for a sum of Rs.5,00,000/- was issued by the accused duly signed and filled, to discharge the debt incurred towards Krishnamoorthy. On failure to honour the cheque, Krishnamoorthy has preferred a complaint and the same was duly taken on file by the Judicial Magistrate. Pending trial, Krishnamoorthy died on 08.10.2011. On his death, his legal heir was given power of attorney in favour of Krishnamoorthy. The application was filed under Section 302 of Cr.P.C., seeking leave of the Court to continue the case in the place of Krishnamoorthy. The same was numbered as Cr1.M.P.No.63 of 2012 in C.C.No.27 of 2012.

9. After affording opportunity to the revision petitioner / accused the Court below had considered the merits of the



application and passed an order on 22.05.2012, permitting Kumariselvan to continue the case. Therefore, there is no error or illegality in the said order and further more the accused has not preferred any appeal or revision challenging the order of the trial Court, allowing Kumariselvan to continue the prosecution.

10. So far as, the source of income questioned by the revision petitioner /accused, the counsel for the first respondent would content that Krishnamoorthy and Nalla Perumal were known to each other and a sum of Rs.5,00,000/- was given by Krishnamoorthy on the request of Nallaperumal to meet out his daughter's marriage. Pursuant to that, Ex.P.1, Cheque was given in his own handwriting. After giving the cheque to discharge the debt, a vague plea has been taken that the source of income has not been proved. While the complainant has proved the issuance of cheque for an enforceable debt, the burden is on the revision petitioner / accused to discharge the same which the revision petitioner / accused has failed to discharge. Hence both the Courts have rightly considered and there is no necessity to interfere with the well considered order of the Courts below.

11. The points for consideration are, whether the plea raised by the revision petitioner is sustainable? The cheque Ex.P.1 is given in the handwriting of the accused duly signed and proved. He has not discharged the burden of the non-execution of the cheque or enforceability of debt. The plea of continuing the prosecution through one of the legal heirs of Krishnamoorthy is also legally permissible. Since the application filed by Krishnamoorthy under Section 302 of Cr.P.C., has been allowed by the trial Court by assigning reason. Against that order, the revision petitioner / accused has neither filed any counter objecting the application nor filed any appeal.

12. In the said circumstances, there is no ground to interfere with the well considered order of the Courts below. Accordingly, this Criminal Revision Petition is dismissed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-I)

**To:**

<https://hcservices.courts.gov.in/hcservices/>  
The Principal District and Sessions Judge,  
Kanyakumari District at Nagercoil.



2. The Judicial Magistrate, Fast Track Court No.II,  
(Magisterial level), Nagercoil.

3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+ 1 CC TO Mr.C.T.PERUMAL, ADVOCATE IN SR No. 87329

+ 1 CC TO Mr.C.MUTHU SARAVANAN, ADVOCATE IN SR No. 87433

PNN

TE/RSK/SAR-1 : 25/10/2018 : 4P/6C

ORDER MADE IN  
Crl.R.C. (MD) No.574 of 2016  
27.09.2018