



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2018

CORAM

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THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.(MD) No.529 of 2018

and

Crl.M.P.(MD) Nos.7341 and 7342 of 2018

S.Vijayakumar

... Petitioner

Vs.

P.Prakash

... Respondent

PRAYER: Criminal Revision Case - filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records relating to the impugned order passed in C.A.No.65 of 2016 dated 25.11.2016 on the file of the Hon'ble Court of the Mahalir Neethimandram Fast Track Mahila Court, Karur confirming the order passed in C.C.No.490 of 2014 dated 16.09.2016 on the file of the Court of Judicial Magistrate, Fast Track Court at Magisterial Level, Karur and set aside the same as illegal.

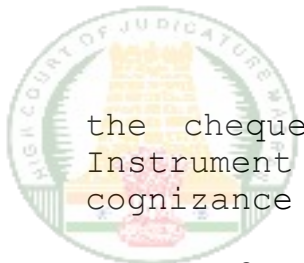
For Petitioner : Mr.B.Saravanan

For Respondent : Mr.V.Meenakshi Sundaram

ORDER

This revision case is directed against the judgment of the Mahalir Neethimandram Fast Track Mahila Court, Karur in C.A.No.65 of 2016 dated 25.11.2016 confirming the judgment passed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur in C.C.No.490 of 2014 convicting the revision petitioner to undergo six months R.I., and pay a fine of Rs.3,000/- in default one month S.I., for the offence under Section 138 of NI Act.

2.The brief facts of the case leading to the revision petition are that the revision petitioner herein borrowed a sum of Rs.5,00,000/- from the respondent / complainant on 25.04.2014. To discharge the said debt, he gave a cheque dated 23.06.2014 drawn from the account maintained by him in Axis Bank limited, Karur. When the cheque was presented for collection, it was returned with an endorsement 'funds insufficient'. Hence, the complainant issued statutory notice on 24.06.2014 calling upon the accused / revision petitioner herein to pay the cheque amount within the period prescribed. Since the accused / revision petitioner failed to pay



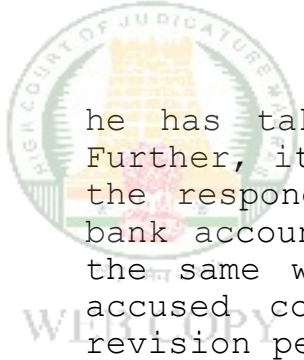
the cheque amount, a complaint under Section 138 of Negotiable Instrument Act, has been lodged and the same has been taken cognizance by the learned Judicial Magistrate.

3. After examining the examination of the complainant as P.W.1, Exhibits marked on his behalf, recording of the evidence of the accused and one Mohanasundaram and two documents relied by the defence side, the trial Court declined to accept the contention of the accused / revision petitioner that the cheque was not issued by him and the signature found in the cheque is not that of his signature. Further, the Court below has held that the cheque marked as Ex.P1 was issued by the accused to discharge the enforceable debt and having declined the cheque, he is liable for the offence under Section 138 of Negotiable Instruments Act. Accordingly, the trial Court has sentenced him to undergo six months S.I., and pay a fine of Rs.3,000/- in default to undergo one month S.I.. Aggrieved by the same, the accused has preferred an appeal before the Sessions Court. The Sessions Court, after appreciating the evidence, has dismissed the appeal, thereby confirmed the judgment of the trial Court.

4. The learned counsel appearing for the accused / revision petitioner would contend that the Courts below have not properly appreciated the defence of the accused regarding genuineness of the signature found in the cheque [Ex.P1]. Further, it is also contended by the learned counsel that when the accused has denied the proximity with the complainant and the complainant has failed to show any prima facie material regarding legally enforceable debt or liability, the Courts below ought not to have drawn the presumption under Section 118 of Negotiable Instruments Act or under Section 139 of Negotiable Instruments Act for the purpose of convicting the revision petitioner.

5. It is contended by the learned counsel for the revision petitioner that the cheque was stolen by one Mathiselvam, who was a partner of the accused and he in connivance with the complainant has lodged a false complaint as if the cheque was issued to discharge the enforceable debt. The learned counsel would also referred the testimony of D.W.1 and D.W.2 to show that the accused and one Mathiselvam were together running a Pizza Shop for quite some time and later they broke.

6. Per contra, the learned counsel appearing for the respondent / complainant would submit that the defence now projected by the accused has not been stated at the earliest point of time. He ought to have replied for the statutory notice issued by him. Further pointing out the reasoning of the Courts below that if there was any discrepancy in the Signature found in the cheque, the Bank would have mentioned in the return memo that the signature varies, whereas the Bank has only mentioned that there is no sufficient fund in the account. This would clearly show that the cheque was signed by the accused and for the sake of evading criminal responsibility,



he has taken a plea that the signature was not signed by him. Further, it is also pointed out by the learned counsel appearing for the respondent that the signature of the accused is found in the bank account opening form, which was called for by the accused and the same was compared by the Court and nothing in favour of the accused could be made out. Therefore, he submitted that the revision petition has no merit and liable to be dismissed.

7.The point for consideration is whether the defence and explanation given by the accused to rebut the presumption had properly been considered by the Courts below.

8.According to the complainant, the subject cheque was issued to discharge the loan borrowed by the accused on 25.04.2014, whereas the case of the accused is that the said cheque was stolen by Mathiselvlam and misused by the complainant. However, if the version of the accused is true, then he should have taken some measures to stop misuse of the said cheque, which he has not done and he has not placed any record to show that he has taken some measures to stop the misuse of the stolen cheque.

9.The accused contend that the signature found in the cheque has been forged and he has not signed the cheque. Then it is for him to prove the signature in the cheque is not his signature. To discharge the said burden, to compare the disputed signature with his admitted signature, the accused had called the specimen signature card from the Bank, which is marked as Ex.P1. However, on comparison, the Courts below have declined to accept the defence version. In the said circumstances, the finding of the Courts below is justifiable. Hence, this Court does not find any merit in this revision case accordingly, it is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Sessions Judge,
Mahalir Neethimandram Fast Track Mahila Court,
Karur

2. The Judicial Magistrate,
Fast Track Court at Magisterial Level,
Karur.



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

+ 1 CC TO Mr.B.SARAVANAN, ADVOCATE IN SR No. 93678
+ 1 CC TO Mr.D.NALLATHAMBI, ADVOCATE IN SR No. 93695

TA

TE/BK/SAR-2 : 10/12/2018 : 4P/6C

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