



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.R.C(MD)No.174 of 2013

Shanthakumar

..Petitioner/Appellant/Accused

Vs.

Kunjammal

.. Respondent / Respondent /
Complainant

PRAYER: Criminal Revision Case is filed under Section 397 r/w. 401 of the Code of Criminal Procedure, praying to set aside the order passed in Criminal Appeal No.85 of 2008, dated 14.03.2012 by the learned I-Additional District Judge, Trichirppalli, confirming the order made in C.C.No.684 of 2006 on the file of the learned Judicial Magistrate No.V, Trichirappalli dated 26.06.2008.

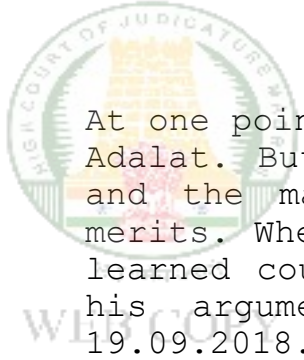
For Petitioner : Mr.R.Sundar

For Respondent : Mr.V.Illanchezian

ORDER

This Criminal Revision Case is filed against the concurrent findings of the Courts below pursuant to dishonour of cheque issued for Rs.3,00,000/- on 21.06.2006.

2. In C.C.No.684 of 2006, the trial Court after considering the evidence let in by the plaintiff has found the revision petitioner guilty and directed him to pay compensation of Rs.3,00,000/- within two months besides sentenced him to undergo one year Rigorous Imprisonment. Aggrieved by that, he has preferred an appeal in C.A.No.85 of 2008 before the learned I-Additional District Judge, Trichy. After considering the grounds of appeal and deciding the legality of the trial Court judgment in the light of the evidence let in by the respectable parties, the first appellate Court has found no merit in the appeal and dismissed the same confirming the order of the trial Court passed in C.C.No.684 of 2006 dated 26.06.2008. Aggrieved by the concurrent findings of the Courts below, the present revision has been preferred by the petitioner.



At one point of time, this Court has referred the matter to Mega Lok Adalat. But the parties did not appear before the Mega Lok Adalat and the matter was returned back to the Court for disposal on merits. When the matter was taken up for hearing on 18.09.2018, the learned counsel for the petitioner requested a day time to advance his arguments. At his request, the matter was adjourned to 19.09.2018. Since the matter was not reached on 19.09.2018, the matter was again listed on 27.09.2018. On that day, there was no representation for the revision petitioner. Hence, this Court issued bailable warrant to the revision petitioner, who had been enjoying suspension of sentence by the order of this Court. But conveniently obstructing himself from appearing before this Court either in person or through counsel. Pursuant to the bailable warrant, the revision petitioner is present today. The learned counsel on record is also present today.

4. The learned counsel on record submits that he has handed over the bundle to the revision petitioner 10 days back. So far as the revision petitioner has not engaged a counsel. This tactics is prevailing for quite sometime, but cannot be entertained any further. If a case filed in the year 2006 and kept pending without a finality because of the dialectic tactics adopted by the accused persons, soon this will lose its credibility. Hence, this Court has no other alternate, but to go through the records and pass orders.

5. The case of the plaintiff is that the accused herein borrowed a sum of Rs.3,00,000/- as loan in installments and had executed pro-note. When the plaintiff demanded back the money, the accused issued the subject cheque for Rs.3,00,000/- on 21.06.2006. When the said cheque was presented for collection bounced back for insufficient fund. After issuance of statutory notice, complaint under Section 138 of Negotiable Instruments Act, 1881, has been preferred. P.W.1-Kunjammal had examined herself and deposed about the factum of loan advanced to the accused, his execution of pro-note and handing over of the subject cheque for discharge of the loan. The cheque is exhibited as P1, the return memo of the bank marked as Ex.P2, statutory notice marked as Ex.P3, the acknowledgment card to show that the accused received the statutory notice is marked as Ex.P4.

6. The defence taken by the accused is that the cheque was not issued by him for any enforceable debt, he gave a cheque as a security for the loan availed by his cousin Janarthanan. Since Janarthanan failed to pay the loan availed by him, the cheque given by the accused as security to the complainant has been misused. Four exhibits were marked in support of his defence. The trial Court after appreciating the evidence let in by both the sides has held that the accused has not denied the signature found in the cheque, though he denies execution of the pro-note. The case of the accused that the cheque was issued as security for the loan availed by Janarthanan has not been proved by any acceptable evidence. Therefore, the reverse burden of the accused not being properly



discharged, the trial Court has accepted the prosecution version and found the accused guilty. On appeal the appellate court re-appreciated the evidence and hold that the evidence of D.W.1 is highly fragile and bleak. His defence alleging the a cheque case filed against him by one Selvendran got dismissed in the year 2004 have no relevancy to the present case.

7. In this revision also, the accused has canvassed the very same point, which he has canvassed before the trial Court and the appellate Court. They are all issues on fact which has been held against him by the fact finding Courts. While the Courts below have accepted the reason given by the complainant for not produced the original promissory note executed by the accused for the money borrowed, the same point is again sought to be canvassed in this revision.

8. The specific case of the complainant that the accused borrowed money to the tune of Rs.3,00,000/-, executed the pro-note and in view of discharging the debt, he has issued the cheque and taken back the pro-note. This had been cogently and convincingly proved by the complainant. The subject cheque issued by the accused from his account and later, on presentation bounced for want of fund. Section 138 of Negotiable Instruments Act, 1881, squarely applies to this case and this Court finds no reason to interfere the well considered judgment of the trial Court and the appellate Court, which has confirmed the same.

8. Today, the revision petitioner/accused is present before the Court and submit that if one month time is granted, he will pay the cheque amount and he may be exonerated from undergoing the sentence of imprisonment. The learned counsel for the respondent/complainant agrees, if the cheque amount is paid as compensation, he cannot have any grievance to insist upon imprisonment part of sentence. Considering the submissions, this Court, while confirming the conviction imposed on the accused by the trial Court and as confirmed by the Appellate Court, modify the sentence to the effect that the revision petitioner shall pay Rs.3,00,000/- being the cheque amount as compensation to the complainant/respondent within a period of 30 days from today. The sentence of one year Simple Imprisonment is set aside, in default of paying the compensation within 30 days from today, he shall undergo Simple Imprisonment for a period of nine months. Accordingly, this criminal revision is disposed of.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub Assistant Registrar(CS-I)



PJL

To

1. The I-Additional District Judge,
Trichirppalli.

2. The Judicial Magistrate No.V,
Trichirappalli.

Copy to

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

+1cc to Mr.R.Sundar, Advocate in SR No.89854

+1cc to Mr.V.Illanchezhian, Advocate in SR No.90113

Cr1.R.C(MD)No.174 of 2013

NM/PM/SAR I/24.10.18/4P/7C.