



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH****Cr1.R.C. (MD) No.195 of 2013**

V.Kalimuthu : Petitioner
Vs.

M.Deivanayagam : Respondent

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to set aside the order made in Criminal Appeal No.50 of 2012 in C.C.No.106 of 2012 on the file of the First Additional District and Sessions Court, Thoothukudi, dated 18.12.2012 in confirming the order made in C.C.No.106 of 2012 on the file of the Fast Track Judicial Magistrate, Thoothukudi, dated 06.10.2012.

For Petitioner : Mr.S.Jeyasingh

For Respondent : Mr.N.Dilip Kumar

ORDER*********

For the sake of convenience, the parties will be referred to as the complainant and the accused.

2. It is the case of the complainant that he is an Agriculturist as well doing lorry hire business; that the accused was doing business in Tirunelveli Town and is well known to the complainant; that the accused requested the complainant to give a hand loan of Rs.3,00,000/- (Rupees Three Lakhs only) for purchasing a tractor in connection with his business; that the complainant gave Rs.3,00,000/- (Rupees Three Lakhs only) on 09.10.2004; that in discharge of the liability, the accused gave a cheque dated 09.12.2004 for Rs.3,00,000/- (Rupees Three Lakhs only) to the complainant; that on 10.12.2004, the complainant deposited the cheque and the same was returned unpaid on 17.12.2004 with the endorsement 'insufficient funds'; that the complainant informed the same to the accused and the accused requested him to re-present the cheque; that the complainant re-presented the cheque on 12.01.2005 and the cheque was again dishonoured on 13.01.2005; and that the complainant issued a legal notice on 20.01.2005, despite which, the accused did not make the



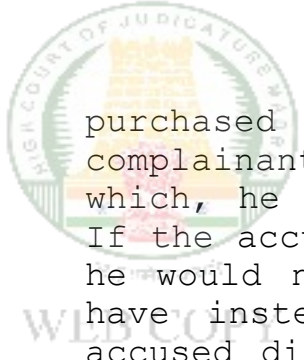
payment. Therefore, the complainant initiated the prosecution in S.T.C.No.1313 of 2005 before the learned Judicial Magistrate No.1, Tuticorin and on the creation of Special Fast Track Courts, the case was transferred and re-numbered as C.C.No.106 of 2012. Before the Trial Court, the complainant examined himself as P.W.1 and marked seven Exhibits. When the accused was questioned under Section 313 of the Code of Criminal Procedure, he denied the same. On behalf of the accused, one Shanmugavel Asaari (D.W.1) was examined and no Exhibits were marked. After considering the evidence adduced by both sides, the Trial Court, by judgment dated 06.10.2012 in C.C.No.106 of 2012, convicted the accused under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one year and to pay compensation of Rs.3,00,000/- (Rupees Three Lakhs only) to the complainant, within three months and in default, to undergo simple imprisonment for three months. The accused filed Crl.A.No.50 of 2012 before the Sessions Court, Tuticorin and the learned First Additional District and Sessions Judge, Tuticorin, by judgment dated 18.12.2012, dismissed the appeal and confirmed the conviction and sentence imposed by the Trial Court. Challenging the orders passed by the Courts below, the present Criminal Revision Case has been filed.

3. On a perusal of the records, it is seen that the complainant, who examined himself as P.W.1, has proved the facts relating to the issuance of the cheque and the dishonour of the same twice.

4. It was contended by the accused that the criminal prosecution should have been filed on the first dishonour itself and not when the cheque was dishonoured for the second time.

5. Law in this regard has been fairly settled by the Supreme Court in **MSR Leathers v. S.Palaniappan [2013(1) SCC 177]**, wherein the Supreme Court has held that prosecution can be initiated based on the second presentation of the cheque.

6. It is the case of the accused that the complainant has no means to give the hand loan of Rs.3,00,000/- (Rupees Three Lakhs only) and that the impugned cheque was a blank cheque that was given by the accused to the complainant, since the complainant acted as a broker in the tractor purchase transaction between the accused and one Vannamuthu. The accused has not denied his signature in the cheque and, therefore, the presumption under Section 139 of the Negotiable Instruments Act applies. However, the accused can discharge the presumption under Section 139 of the Negotiable Instruments Act by preponderance of probabilities. The evidence of D.W.1 does not support the theory put forth by the accused. Apart, the accused did not even choose to examine Vannamuthu, from whom, he is said to have purchased the tractor. It is not the case of the complainant that the tractor was



purchased from him (complainant). It is the case of the complainant that the accused wanted to purchase the tractor, for which, he wanted Rs.3,00,000/- (Rupees Three Lakhs only) as loan. If the accused has had no financial dealings with the complainant, he would not have given the cheque to the complainant and would have instead given the cheque to Vannamuthu. That apart, the accused did not choose to give any reply notice to the statutory notice that was given by the complainant. In such view of the matter, this Court does not find any infirmity in the orders passed by the two Courts below warranting interference. Hence, the Criminal Revision Case stands dismissed, confirming the conviction and sentence imposed by the Courts below. The Trial Court is directed to take steps to incarcerate the accused in prison, so as to serve out the remaining period of sentence.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The First Additional District and Sessions Judge,
Thoothukudi.
2. The Fast Track Judicial Magistrate,
Thoothukudi.

+ 1 cc TO Mr.N.Dilip Kumar , Advocate in SR No. 56892
+ 1 cc TO Mr.S.Jeyasingh , Advocate in SR No. 57143

SML

AE/JC/SAR3/20.04.2018/3P/5C

Order made in
Cr1.R.C. (MD) No.195 of 2013
Dated: 21.03.2018