

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.1738 of 2011

Mr.Thangavelu,
S/o.Gopal,
No.81, Ilango Adigal Street,
Periyar Nagar (South)
Virudhachalam. Petitioner/Accused

/versus/

Renganathan,
S/o.Poorasami,
No.15, Doassgast Nagar,
Virudhachalam Respondent/Complainant

Prayer:- Criminal Revision Petition is filed under Section 397 r/w 401 of I.P.C., to set aside the order passed by the Learned Additional District and Sessions Judge, (Fast Track Court No.III, Virudhachalam) in C.A.No.10 of 2011 dated 17.11.2011 confirming the order in S.T.C.No.1004 of 2008, Judicial Magistrate No.I, Virudhachalam.

For Petitioner : Mr.Thamizharasan
Legal Aid Counsel

For Respondent : Mr.C.Santhosh Kumar
for M/s.AL.Ganthimathi

O R D E R

This Revision Petition is directed against the concurrent finding of the Courts below holding the Revision Petitioner guilty of offence under Section 138 of Negotiable Instrument Act.

2. The facts involved in this case is that the complainant Mr.P.Ranganathan and the accused Mr.G.Thangavel who is now the Revision Petitioner before this Court are friends. The complainant was working as Teacher and retired. The accused was running textile business by name and style M/s.Gomathi Textiles. To meet out the family expenditure, to expand his

business, the accused borrowed a sum of Rs.9,00,000/- from the complainant. After repaying a sum of Rs.2,00,000/- on 13.04.2008, for the balance Rs.7,00,000/-, he gave a cheque on even dated drawn from his account maintained in Cuddalore Co-operative Central Bank, promising that he will repay the money within 5 months. When the cheque was presented on 17.09.2008 as instructed by the accused, the cheque bounced with endorsement "Insufficient of fund". Therefore, statutory notice was issued on 10.10.2008 which was received by the accused on 15.10.2008. Since, the accused failed to pay the cheque amount but denied the liability through his reply notice. Subsequently, a complaint was filed before the Judicial Magistrate No.1, Virudhachalam. The complaint was taken on file and tried as S.T.C.No.1004 of 2008.

3. On appreciating the evidence let by the prosecution, examining himself as PW.1 Ranaganathan and Ramasamy (PW.2), marking 11 Exhibits as Ex.P.1 to Ex.P.11. The evidence of accused was examined as DW.1.

4. The trial Court held that the accused has issued the cheque for legally enforceable debt, same has been bounced without honouring, when presented for collection. Therefore, the appellant is guilty of offence under Section 138 of Negotiable Instrument Act, convicted to undergo 1 year S.I and to pay a fine of Rs.5,000/-, in default to undergo 3 months S.I.

5. Aggrieved by the conviction and sentence, the accused has preferred the appeal before the District and Sessions Judge, F.T.C.No.3, Virudhachalam in C.A.No.10 of 2011. After re-appreciating the evidence, considering the grounds of appeal, the lower Appellate Court has confirmed the conviction and sentence passed by the trial Court.

6. Aggrieved by the concurrent findings, the present revision was filed, while admitting the revision petition, this Court suspended the sentence.

7. When the matter was listed for final hearing, there was no representation for the revision petitioner. Hence, counsel was appointed through Legal Service Authority, Mr.Thamizharasan, who entered appearance behalf of the revision petitioner and made his submissions. Meanwhile, it was reported that the revision petitioner is not complying the condition. Bailable warrant was issued, to secure the petitioner and produce before this Court. Accordingly, the revision petitioner was produced before this Court on 28.02.2019, on that day, one Mr. T.Meganathan, represented that he is now instructed by the revision petitioner to conduct the case and also there is a

likelihood of settlement. Therefore, sought for adjournment. Accordingly on 28.02.2009, this Court granted adjournment posted the matter on 14.03.2019, with a condition that the revision petitioner now having opted to engage counsel of his own, but should pay a sum of Rs.5,000/- to the Legal Aid Counsel who had been conducting the case on his behalf.

8. Today when the matter was called, it was represented by Mr.Thamizharasan Legal Aid Counsel, that the revision petitioner has not pay the cost, as directed by this Court. There is no representation for the revision petitioner. Mr.T.Meganathan who undertook to file Vakalath and to conduct the case conspicuously missing. Mr.Thamizharasan, the Learned Counsel appointed by Legal Service Authority made his submission on behalf of the revision petitioner, due to his commitment to the spirit of Legal service.

9. According to the learned counsel appearing for the revision petitioner is that the complainant is a known person to the accused. The cheque was given only as a security and same has been clearly stated in the reply notice. Further, the accused himself as mounted the witness box and subjected himself for examination, wherein, he has explained the circumstances under which the subject cheque was issued while borrowing a sum of Rs.2,00,000/- in the year 2003. Having paid the periodical interest regularly and Principal on 30.04.2008, the complainant though promised to return back the blank cheque and pro-note, he has misused the blank cheque by filling it up and presenting for collection.

10. The learned counsel appearing for the revision petitioner and also pointing out the Ex.P.9 reply notice given by the revision petitioner/accused and the testimony of the accused. On considering the rival submissions and the judgment of the Courts below, this Court finds that the revision petitioner does not deny the genuineness of the cheque marked as Ex.P.1. The receipt on the statutory notice is also accepted and reply notice dated 26.07.2008 has been issued by the revision petitioner. On receipt of the reply notice denying the liability, the complainant in turn sent a re-joinder, which is marked as Ex.P.10, wherein, he has refuted the defence taken by the accused/petitioner.

11. The factum of issuance of cheque and the averment that there was loan transaction between the complainant and the accused. Being admitted the presumption under Section 139 of Negotiable Instrument Act gets attracted. In order to discharge the burden, the accused/petitioner has examined himself as DW.1

and rely upon his reply notice. However, his attempt to rebut the presumption gets falsified through Ex.P.8. The agreement entered between the complainant and the accused on 05.08.2007, wherein, in the presence of witness, the revision petitioner has accepted that he owe Rs.9,00,000/- to the complainant and in the presence of witnesses and mediator, he agree to repay the loan in three installments (starting from 10.10.2007). It is admitted facts by both the parties that on 13.03.2008 the accused/petitioner paid a sum of Rs.2,00,000/-. It is not the case of the revision petitioner that he has paid the balance amount earlier or subsequent. His case is that he borrowed only Rs.2,00,000/- and that was repaid on 13.04.2008. This contention is falsified in the light of Ex.P.8 and the deposition of PW.2, who is one of the witness to Ex.P.8. Therefore, this Court finds no merit in this revision petition to interfere. The finding of the Courts below is in accordance with law based on the evidence and proof.

12. Accordingly, the Criminal Revision Petition is dismissed.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To,

1. The Learned Additional District and Sessions Judge,
Fast Track Court No.III, Vriudhachalam.
2. The Judicial Magistrate No.I, Vriudhachalam.
3. The Section Officer, Criminal Section, High Court, Madras.

+1cc to Mrs.AL.Ganthimathi, Advocate SR.No.24403

+1cc to Mr.T.Meganathan, Advocate SR.No.24267

+1cc to Mr.A.Thmizharasan Advocate SR.No.24106

Cr1.R.C.No.1738 of 2011

VSNII(CO)

GMV(09/04/2019)