

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.202 of 2019 and
Crl.M.P.Nos.2066 and 2064 of 2019

Jayamurugan

...Petitioner/Accused

-Vs-

Maruthamuthu

..Respondent/Complainant

This Criminal Revision Petition is filed under Sections 397 read with Section 401 of Cr.P.C. to call for records pertaining to the judgment rendered in Crl.A.No.204 of 2018 dated 04.12.2018 by the 1st Additional District Sessions Judge, Coimbatore, modifying the conviction and sentence passed by the learned Judicial Magistrate No.2, Pollachi, Coimbatore District in S.T.C.No.230 of 2016 dated 03.05.2018 and set aside the same.

For Petitioner : Mr.P.Prabudoss

O R D E R

The petitioner is accused and respondent is complainant. The respondent filed a complaint before the Judicial Magistrate No.2, Pollachi, Coimbatore District in S.T.C.No.230 of 2016, under Section 138 of Negotiable Instrument Act. According to respondent/complainant, the petitioner along with his wife has borrowed a sum of Rs.5,50,000/- for their urgent family needs, for which, the petitioner had issued a cheque bearing No.020678 dated 21.12.2012 drawn at Axis Bank for a sum of Rs.5,00,000/-. The respondent/complainant presented the above cheque for collection, but the same was returned as "insufficient fund" and hence the respondent has sent a legal notice, for which no reply has been received and therefore, the respondent/complainant has filed a complaint against the petitioner. Before the trial Magistrate, the respondent/complainant examined himself as P.W.1 and marked documents Ex.P1 to Ex.P8 and on the side of the defence, the petitioner/accused examined himself as D.W.1 and marked documents Ex.D1 to Ex.D4. The learned Magistrate after adverting to the materials placed on record, by judgment dated 03.05.2018 convicted the petitioner and sentenced him to undergo

simple imprisonment for a period of 1 year and directed to pay Rs.5,00,000/- as compensation. Aggrieved against the same, the petitioner/accused has preferred an appeal before the learned Ist Additional District and Sessions Judge, Coimbatore, in C.A.No.204 of 2018. The learned Sessions Judge, after hearing both the parties, by judgment dated 04.12.2018 confirmed the conviction and modified the sentence alone from 1 year to six months simple imprisonment, against which the petitioner is before this Court with the present criminal revision case.

2 According to the learned counsel for petitioner/accused, even though, the petitioner has specifically denied his signature, the trial Court failed to consider the same and shifted the burden of proof on the petitioner, which warrants interference of this Court.

3 Heard the learned counsel appearing for the petitioner and perused the materials available on record.

4 The petitioner did not take any steps to send the disputed signature for Expert's opinion, when he specifically denies the same. Once execution of cheque is proved by the respondent/complainant, the petitioner/accused is bound to rebut the presumption under Section 139 of Negotiable Instruments Act, which favours the complainant, who is holder of the cheque. In the absence of any evidence to rebut the presumption, this Court cannot interfere with the judgment of conviction made by the Courts below unless found there is perversity in appreciating the evidence.

5 Accordingly, the criminal revision case is dismissed. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The 1st Additional District Sessions Judge, Coimbatore.
2. The Judicial Magistrate No.2, Pollachi, Coimbatore District

CrI.R.C.No.202 of 2019 and
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SJ(CO)
SP(07/03/2019)