

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.04.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.239 of 2012

Sheik Allaudin,
S/o.Mohamed Basheer,
Punganur Village,
Sirkali Taluk,
Nagapattinam District. ... Petitioner/Appellant/Accused

/versus/

K.Srinivasan,
S/o.Krishnamurthy,
No.14/9, Amman Sannathi Street,
Vaitheeswarankoil, Sirkali Taluk,
Nagapattinam District. ... Respondent/Complainant

Prayer:- This Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records and set aside the judgment passed by the Hon'ble Sessions Judge, Nagapattinam in CrI.A.No.50 of 2007 dated 27.04.2011 and in S.T.C.No.1232 of 2006 dated 19.04.2007 passed by the Judicial Magistrate, Sirkali and set the petitioner at liberty.

For Petitioner : Mr.G.Pugazhenth

For Respondent : Mr.Shivakumar
for K.M.Vijayan Associates

O R D E R

Heard the Learned Counsel for the Revision Petitioner and the Learned Counsel for the Respondent.

2. This Revision Petition is directed against the concurrent finding of the Courts below in the matter arising under Section 138 of Negotiable Instrument Act.

3. The case of the complainant is that the accused borrowed a sum of Rs.3,00,000/- from the him on 10.03.2006 and executed a

pro-note. When he demanded for re-payment of the money, the accused issued a cheque dated 04.09.2006 drawn on Indian Overseas Bank, for a sum of Rs.3,00,000/-. When the cheque was presented for collection, same was returned with memo stating that "insufficient of fund". The complainant sent statutory notice dated 15.09.2006 to the accused calling him to pay the cheque amount or to face the consequence. The accused gave a reply dated 01.10.2006 with evasive answer but denied the liability. Hence the complaint was filed before the Judicial Magistrate, Sirkali and same was taken on file in S.T.C.No.1232 of 2006.

4. To prove the complaint, the complainant has examined himself as PW.1. 6 Exhibits were marked which are the subject cheque Ex.P.1, Memo of Indian Overseas Bank, Punganur Branch marked as Ex.P.2, Memo of Indian Overseas Bank, Vaitheeswarankoil Branch marked as Ex.P.3, the statutory notice Ex.P.4, Postal acknowledgement card Ex.P.5 and reply notice Ex.P.6.

5. The trial Court as well the Appellate Court has held that the accused admits the issuance of cheque and in its reply, admit that he had received only Rs.2,00,000/- on 10.03.2006 and issued the blank signed cheque and some unfilled blank papers.

Having admitted the borrowing and issuance of cheque, the presumption against him not been rebutted. The defence witnesses examined by the accused also admits the borrowing, but only differs with the quantum of money borrowed. So, taking into consideration of the cumulative evidence let by the prosecution as well as the defence, the Courts below have held in favour of the complainant saying that merely on the ground that different consideration pleaded by the accused will not rebut the presumption of legally enforceable liability. As per Section 118 of Negotiable Instrument Act, the presumption regarding consideration, date and place are to be drawn as it is found in the instrument.

6. Hence, the finding of the Courts below that the subject cheque (Ex.P.1) was issued for discharge of enforceable debt is legally sustainable. Further, when discharge of debt not proved by the accused but debt is positively proved by the complainant through the cheque as well as the admission of the accused himself about the money transaction with the complainant. So, this Court does not find any infirmity in the finding of the Courts below so far as holding the accused guilty of offence.

7. Though the accused in the revision petition would contend that the accused has discharged the burden under Section 138 of Negotiable Instrument Act by examining DW.1 and DW.2, and also through reply notice marked as Ex.P.5. The evidence placed does not support the said contention. However, the sentence imposed by the trial Court that the accused has to undergo 6 months Simple Imprisonment and also to pay a fine of Rs.3,00,000/- within one month to the complainant appears to be excessive. The counsel appearing for the revision petitioner has brought to the notice of this Court that subsequent to the filing of the revision petition, the parties have entered into a compromise, wherein the complainant has agreed to receive the total sum of Rs.3,10,000/- from the accused towards full-quit and settlement and also received a sum of Rs.1,50,000/-. The revision petitioner who promised to pay the balance of Rs.1,60,000/- within period of four months, failed to pay the balance amount within the time prescribed hence he was not able to report settlement out of Court and seek compounding.

8. In the light of the above facts that the revision petitioner had come forward to pay the cheque amount to the complainant, there is no necessity to impose any sentence of imprisonment to the accused. It is also brought to the notice of this Court that, at the time of admitting the Criminal Revision, the revision petitioner was directed to deposit a sum of Rs.75,000/- in the S.T.C account. Accordingly, the revision petitioner has deposited Rs.75,000/- on 20.03.2012. The learned counsel for the revision petitioner has also furnished the receipt for the proof of same.

9. In the light of the above facts, this Court while confirming the conviction modified the sentence as below:-

(i) The revision petitioner shall pay a sum of Rs.3,10,000/- as compensation to the complainant. If any amount already paid towards the cheque amount, pursuant to the agreement dated 25.12.2013, the same may be defrayed. The complainant is permitted to withdraw Rs.75,000/-, deposited in the S.T.C account under receipt No.183477 before the Judicial Magistrate Court, Sirkali. The balance amount of Rs.85,000/- shall be paid by the revision petitioner, within the period of three weeks from today. The said balance amount shall be paid directly to the complainant. If any default in payment of compensation, the revision petitioner shall undergo simple imprisonment for the period of three months.

10. Accordingly, the Criminal Revision Petition is Partly Allowed. Registry is directed to send back the records to the trial Court for further action.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To,

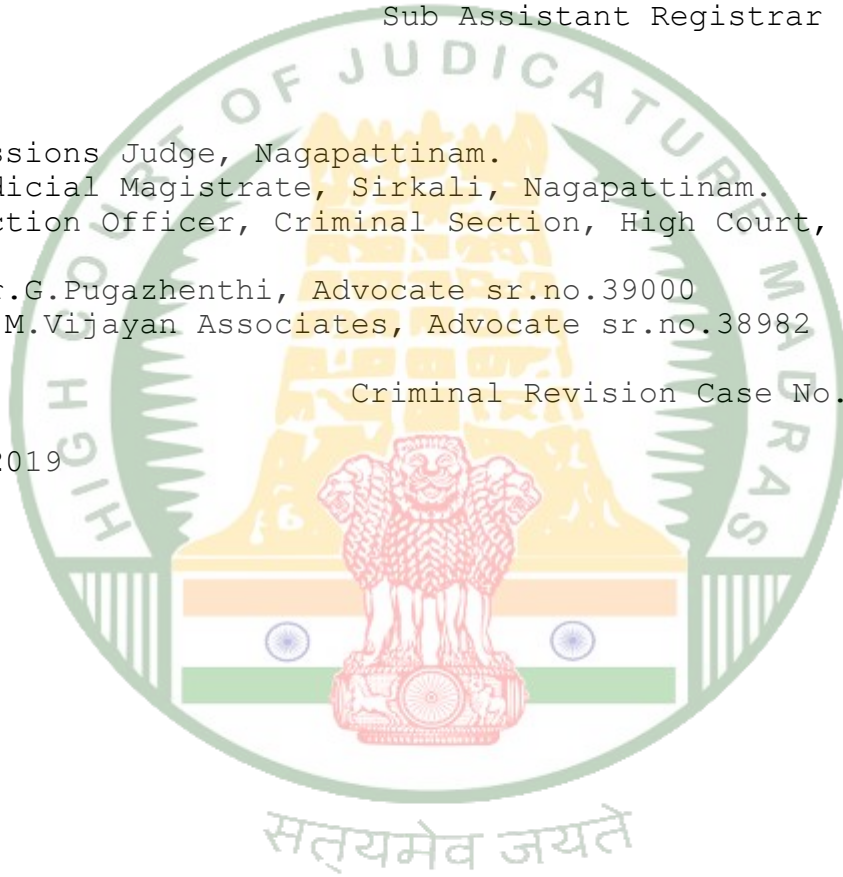
1. The Sessions Judge, Nagapattinam.
2. The Judicial Magistrate, Sirkali, Nagapattinam.
3. The Section Officer, Criminal Section, High Court, Madras.

+1cc to Mr.G.Pugazhenthii, Advocate sr.no.39000

+1cc to K.M.Vijayan Associates, Advocate sr.no.38982

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