

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1432 of 2018

and

Crl.M.P.No.16714 of 2018

D.Moorthy ...Petitioner /Accused
-Vs-
S.Umasankar ...Respondent/Complainant

This Criminal Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the judgment in C.A.No.10 of 2017 dated 03.09.2018 by the learned Principal District and Sessions Judge, Vellore District, Vellore Division, confirming the judgment made by the learned Judicial Magistrate (Fast Track Court), Vellore, Vellore Division, dated 20.01.2017 in C.C.No.2 of 2016 and call for the records and acquit the petitioner from all the charges.

For Petitioner : Mr.R.Anbalagan

For Respondent : Mr.K.Kesavan

ORDER

The respondent filed a complaint against the petitioner under Section 200 Cr.P.C before the learned Judicial Magistrate, Vellore, for the offence under Section 138 of Negotiable Instrument Act (in short 'NI Act'), which was taken on file in C.C.No.2 of 2016. The learned Magistrate, since found the petitioner/accused guilty for the offence under Sections 138 and 142 of NI Act, by judgment dated 20.01.2017, convicted the petitioner/accused and sentenced him to undergo simple imprisonment for two years and directed to pay the cheque amount of Rs.9,35,000/- with 6% interest p.a. from the date of complaint to the respondent/complainant, in default, to undergo simple imprisonment for a further period of three months and also directed to pay a sum of Rs.5,000/- towards litigation expenses. Assailing the above order, the petitioner/accused has preferred an appeal before the learned Principal District and Sessions Judge, Vellore, Vellore District, in C.A.No.10 of 2017. The learned Sessions Judge, after adverting to the materials placed on record and after hearing both the parties, had come to

a conclusion that the petitioner/accused failed to establish his case and hence by judgment dated 03.09.2018, dismissed the appeal and confirmed the judgment of conviction made by the trial Court. Aggrieved against the same, the petitioner/accused is before this Court with the present criminal revision case.

2 The learned counsel for the petitioner would submit that the cheque was issued towards only security purpose under the compulsion made by the respondent and not for any legally enforceable debt. The petitioner did not reply for the notice only due to threat and fear. Both the Courts below had erroneously shifted the burden of proof on the side of the petitioner/accused and convicted him, which warrants interference.

3 According to the learned counsel for the respondent/complainant, the petitioner has given a cheque towards discharge of his liability and when it was presented for encashment, the same was returned as "no sufficient fund". The petitioner did not even reply for the notice sent by the respondent and hence the respondent filed a complaint. Both the Courts below have concurrently held that the accused found guilty for the offence punishable under the NI Act.

4 Heard the learned counsel appearing on either side and perused the materials available on record.

5 It is seen that both the Courts below have concurrently held that the petitioner/accused found guilty of offence punishable under Sections 138 and 142 of NI Act. The trial Court, while convicting the appellant had observed that once signature and execution of the cheque is admitted, it is for the petitioner/accused to prove that the cheque was not issued towards legally enforceable debt and when the accused fails to prove the same, presumption under Section 118 and 139 of NI Act would come into play, which favours the complainant, who is holder of cheque. No doubt, the above said presumption is rebuttable and in this case, the petitioner/accused has failed to rebut the same with adequate evidence or preponderance of probabilities. Hence this Court does not find any merit in the revision and hence the revision is dismissed as far as conviction is concerned. It is pertinent to say that the respondent/complainant is a Financier and he made use of the provisions under Negotiable Instrument Act, but, the actual dispute seems to be civil in nature. However in order to meet the ends of the justice, this Court is inclined to modify the sentence alone.

6 In the result, the criminal revision is partly allowed and the sentence of two years is hereby set aside and the petitioner is directed to pay the compensation alone as directed

by the trial Court by judgment dated 20.01.2017 and further the petitioner need not pay any interest @ 6% and as directed by the trial Court. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

Cgi

To

1. The Principal District and Sessions Judge,
Vellore District.
2. The Judicial Magistrate
(Fast Track Court), Vellore.
3. The Superintendent of Police,
Vellore District.

Copy to :

The Section Officer,
Criminal Section,
High Court of Madras.

+2cc to Mr.R.Anbalagan, Advocate, S.R.No.15978

+1cc to Mr.K.Kesavan, Advocate, S.R.No.16130

Cr1.R.C.No.1432 of 2018 and

Cr1.M.P.No.16714 of 2018

SR(CO)
GN(01/04/2019)

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