



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C.(MD)No.627 of 2011

A.Seesar

... Petitioner

Vs.

1.State of Tamil Nadu Rep. by
The Public Prosecutor,
Nagercoil.

2.K.Pushpareeth.

... Respondents

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to set aside the order passed in Crl.A.No.75 of 2010, dated 15.02.2011, on the file of the Sessions Court, Kanniyakumari Division, Nagercoil as confirmed in S.T.C.No.3912 of 2006, dated 22.04.2010, on the file of the Judicial Magistrate Court No.II, Nagercoil and allow this revision petition.

For Petitioner : Mr.K.Ramanathan
Legal Aid Counsel

For Respondent : Mr.A.Robinson
Govt. Advocate (Crl. Side) for R1

O R D E R

The second respondent/Pushpareeth filed S.T.C.No.3912 of 2006, on the file of the learned Judicial Magistrate No.II, Nagercoil, against the revision petitioner herein under Section 138 of Negotiable Instruments Act. The case ended in conviction. Against the same, the revision petitioner filed C.A.No.75 of 2010, before the learned Sessions Court, Kanayakumari Division at Nagercoil. The appeal was dismissed on 15.02.2011. Challenging the same, this criminal revision case has been filed.

2.Though the revision case has been filed through a counsel, when the case was taken up for hearing, he did not appear. Therefore, this Court directed the Registry to appoint a legal aid counsel to represent the revision petitioner. Today, when the matter was taken up for hearing, the learned legal aid counsel appeared on behalf of the revision petitioner and reiterated all the contentions set out in the memorandum of grounds. The name of the second respondent is printed but there is no appearance on her



behalf.

3. I carefully considered the contentions of the revision petitioner and pursued the evidence on record.

4. It is seen that Ex.P.1/cheque was presented for collection by the complainant on 07.09.2006. The cheque was returned unpaid for "insufficiency of fund". Ex.P.3/statutory notice dated 11.09.2006 was issued by the complainant. The accused received the notice on 18.09.2006. Ex.P.4 is the acknowledgment card. The accused did not comply with the demand set out in Ex.P.3/statutory notice. Hence, private complaint came to be filed.

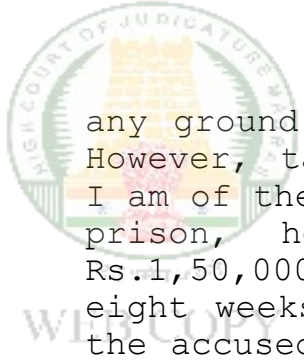
5. The complainant examined herself as P.W.1. The accused examined himself as D.W.1. On behalf of the accused income tax returns were marked as Ex.D.1 and Ex.D.2

6. The learned Trial Judge convicted the revision petitioner and sentenced him to undergo six months simple imprisonment and a sum of Rs.50,000/- was levied as fine. This judgment of the learned Trial Magistrate was confirmed by the learned Appellate Court also. Challenging the same, this criminal revision case has been filed.

7. The legal aid counsel submitted that there has been material alteration in the complaint. He would sustain that the cheque was issued only for a sum of Rs.50,000/- and that the figure "one" has been interpolated by the complainant. I had a look at the original cheque itself. I do not find any such interpolation. In fact in the cheque if the accused had issued the cheque only for a sum of Rs.50,000/-, he would have not only filled in the cheque in figure but also in letters. I therefore, find it difficult to buy the story that only the figure of Rs.50,000/- was mentioned and the cheque was otherwise blank. I reject the defence that Ex.P.1 suffers from material alteration.

8. The accused admits the signature attributed to him in the complaint cheque. Therefore, presumption under Section 139 of Negotiable Instruments Act will come into play. The accused examined himself as DW.1. But then, the presumption raised against him has not been rebutted. The accused did not even bother to respond to Ex.P.3/statutory notice. The accused would come out with cock and bull story that the complainant herself managed to receive the notice through a third party. In Ex.P.4, the signature of the petitioner is only seen. If really the accused had not issued the complaint cheque for a sum of Rs.1,50,000/-, he would have replied appropriately to Ex.P.3/statutory notice.

9. Both the Courts below concurrently found that the complainant had established her case beyond reasonable doubt and that the accused did not rebut the presumption raised against him under Section 139 of Negotiable Instruments Act. When both the Courts below concurrently found the accused guilty, I do not find



any ground to interfere in exercise of my revisional jurisdiction. However, taking note of the circumstances obtaining in this case, I am of the view that instead of straightaway sending the accused to prison, he can be directed to pay the cheque amount of Rs.1,50,000/- as compensation to the complainant within a period of eight weeks from the date of receipt of a copy of this order. If the accused fails to pay the compensation amount, he can be made to undergo the sentence of imprisonment of six months simple imprisonment. Therefore, even while sustaining the conviction imposed on the revision petition by the Courts below, the sentence imposed on the revision petitioner is modified as follows:-

The learned Trial Magistrate will intimate the revision petitioner about the dismissal of this criminal revision case and direct him to deposit the cheque amount of Rs.1,50,000/- to the credit of S.T.C.No.3192 of 2006, on the file of the Judicial Magistrate No.II, Nagercoil, within a period of eight weeks from the date of receipt of the communication from the learned Trial Magistrate. After the revision petitioner deposits the compensation amount as directed by this Court, the same shall be handed over to the complainant. If the petitioner fails to do so, he shall undergo the default sentence of six months simple imprisonment. With this modification in the matter of sentence, this criminal revision case is partly allowed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To:

- 1.The Sessions Court,
Kanniyakumari Divison, Nagercoil.
- 2.The Judicial Magistrate No.II, Nagercoil.
- 3.The Public Prosecutor, Nagercoil.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer, Criminal Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.RAMANATHAN, Advocate (SR-77910[F] dated 26/07/2019)