



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.12.2018

PRONOUNCED ON : 06.03.2019

CORAM :

THE HONOURABLE MR. JUSTICE RMT. TEEKAA RAMAN

CRL.R.C(MD)No.812 of 2010

WEB COPY

R.Panchabakesan

... Revision Petitioner / Appellant /
Sole Accused

-Vs-

C.Vijayaraghavan

... Respondent / Respondent /
Complainant

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records of the learned Additional District Sessions Judge (FTC)No.II, Pattukottai in Crl.A.No.18 of 2010 by judgment dated 09.07.2010 confirming the conviction and sentence recorded by the learned District Munsif cum Judicial Magistrate, Orathanadu in C.C.No.429 of 2008 by judgment dated 19.01.2010 and set aside the judgment of conviction of Courts below and acquit the petitioner.

For Petitioner : M.Karunanithi

For Respondent : Mr.G.Karnan

ORDER

The convicted sole accused is the revision petitioner herein. He has filed this Criminal Revision Case to set aside the judgment passed by the learned Additional Sessions Judge, Fast Track Court, No.II Pattukottai in Crl.A.No.18 of 2010, by judgment dated 09.07.2010, confirming the conviction and sentence recorded by the learned District Munsif cum Judicial Magistrate, Orathanadu in C.C.No.429 of 2008, by judgment dated 19.01.2010.

2.The respondent / private complainant has filed a private complaint before the learned District Munsif cum Judicial Magistrate, Orathanadu, Thanjavur District in S.T.C.No.429 of 2008 against the revision petitioner / accused, alleging that the petitioner / accused has borrowed a sum of Rs.1,25,000/- (Rupees One Lakh and Twenty Five Thousand Only) from the respondent / complainant, promising to repay the loan within six months, but instead of repayment, he issued the cheque Ex.P.1, which was dishonored on presentation for collection and hence, the respondent / private complainant has issued statutory notice on 28.07.2008 and on receipt of which, the accused has sent a reply notice with false allegations and the respondent has filed this complaint.

3.The suggestive case that was put forwarded by the revision petitioner herein before the Court of trial is that he never borrowed any amount much less the sum of Rs.1,25,000/- from the complainant. He issued Ex.P.1 signed in a blank form along

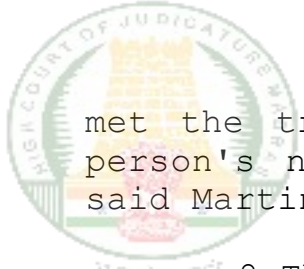
notes and
used by

Exs.D.1 to

revision petitioner / accused to rebut such presumption.

present case has been launched.

<https://hcservices.ecourts7.gov/Tim/hcservices7>



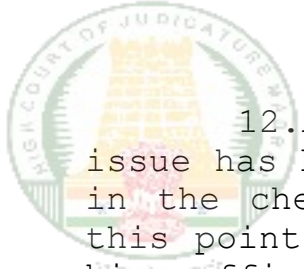
met the travel agent by name Martin to get visa in some other person's name to go abroad for livelihood of the accused. The said Martin was admittedly not examined before the trial Court.

8. The learned counsel appearing for the revision petitioner drawn my attention to Exs.D.1 to D.14 and contended that on the date of alleged issuance of cheque, the accused was not in the Indian place of Thanjavur, but he was in Thakkalay.

9. After going through the documentary evidence of Exs.D.1 to D.14, there are railway tickets for various places in the State of Tamil Nadu and Ex.D.4 is the railway ticket of the Thakkaly. However, after perusing Ex.D.4, there is nothing on record or in the evidence to show that Ex.D.4 was used only by the revision petitioner to travel from Kuzhithalai to Thanjavur. Therefore, an inference that the accused / revision petitioner has used the train ticket to go to Kuzhithalai and returned back to Thanjavur on 11.01.2008 cannot be drawn. Similar finding arrived at by the Courts below on similar reasoning being well founded and well merited does not warrant any interference by this Court. Accordingly, this contention of the revision petitioner stands negatived.

10. The next contention raised by the revision petitioner is based upon Ex.D.18 and Ex.D.19, which are all copies of visa, said to have been issued to one Ravikumar Bojapathy and another one by name Manoharan Krishnamoorthy. According to the learned counsel appearing for the petitioner, a sum of Rs.25,000/- has been paid to one travel agent, namely, Martin to get visa and passport in a duplicate name of Ravikumar Bojapathy. Since the private complainant/ respondent has involved in a criminal case at Singapore, he could not get passport. Admittedly, the documentary evidence adduced before the Court cannot lead to the above said conclusion, since no one connected with visa or any other documents are examined or produced before the Court to substantiate the said plea.

11. This Court is unable to affix the seal of approval for the aforesaid contention that he had issued the cheque as security for getting visa and passport in somebody's name not in the name of the respondent as to how he has to issue security for the amount. Though nothing was suggested in the cross-examination before the trial Court, for the first time, at the appellate stage, the revision petitioner / accused raised a plea that the respondent / private complainant is not having financial capacity to advance a sum of Rs.1,25,000/- to the revision petitioner / accused. In short, the contention of the learned counsel appearing for the revision petitioner is that the respondent does not have sufficient means to pay a sum of Rs.1,25,000/- as pleaded by him.



12. At this juncture, it is to be stated that the cheque in issue has been issued by the revision petitioner and the signature in the cheque is admitted and there was no cross-examination on this point, calling upon P.W.1 to explain his source of income or his sufficiency to issue a sum of Rs.1,25,000/- and hence, as the plea was raised only at the appellate stage and the said plea was never confronted with P.W.1, the trial Court has rightly rejected the said contention and the said finding of the Lower Appellate Court in rejecting the said contention as the same was not confronted with P.W.1, does not call for any interference at this stage.

13. Thus, this Court finds that the private complainant by his oral evidence in P.W.1 coupled with the documentary evidence of Exs.P.1 to P.8 and taking into account the fact that the accused has not disputed the signature in the cheque, both the Courts below have rightly come to the conclusion that he is entitled for a presumption under Section 139 of the Negotiable Instruments Act. Though the revision petitioner / accused has taken several grounds, he failed to probabalise his suggestive case. However, for the reasons recorded in the preceding paragraphs, in the absence of any positive evidence to indicate that the accused alone has actually travelled on the date and using the tickets travelled Thakkalay and come back to Thanjavur, the plea of alibi on the date of issuance has not been proved in the manner known to law.

14. The next contention of the learned counsel is that only the cheque has been issued for the purpose of getting passport for the revision petitioner with the travel agent by name Martin. However, the said plea has not been proved in the manner known to law. There is no positive evidence placed before the Court to show that the cheque has been issued for security and the said Martin alleged travel agent has not also been marked on behalf of the accused. There is nothing on record to show Ex.D.19 visa in favour of one Ravikumar Bojapathy made for the revision petitioner / accused and the next contention that was raised before the appellate stage regarding the financial capacity to lend a sum of Rs.1,25,000/- has been rightly rejected by the Lower Appellate Court as the same was not confronted with P.W.1 during the witness box and hence, the finding of the Lower Appellate Court that the revision petitioner / accused miserably failed to probabalise the suggestive case being well considered and well merited does not warrant any interference by this Court at this revisional stage and accordingly, this Court holds that the revision petitioner / accused having failed to probabalised his suggestive case, I do not see any merit in this Revision Case.

<https://hcservices.ecourts.gov.in/hcservices/> 15. In the view of the matter, this Criminal Revision Case is dismissed. The judgment passed by the learned Additional Sessions Judge (FTC) No.II, Pattukottai in CrI.A.No.18 of 2010 by



judgment dated 09.07.2010 confirming the conviction and sentence recorded by the learned District Munsif cum Judicial Magistrate, Orathanadu in C.C.No.429 of 2008 by judgment dated 19.01.2010, is hereby confirmed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To

- 1.The Additional District Sessions Judge,
Fast Track Court No.II,
Pattukottai.
- 2.The District Munsif cum Judicial Magistrate,
Orathanadu.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Record Keeper, (2 copies)
Criminal Records Section,
Madurai Bench of Madras High Court,
Madurai.

myr

Order made in
CRL.R.C (MD) No.812 of 2010
06.03.2019

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