



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C.(MD)Nos.456 and 457 of 2013

R.S.Ramachandran

... Revision Petitioner in Crl.R.C.(MD)No.456 of 2013

C.Suseela

... Revision Petitioner in Crl.R.C.(MD)No.457 of 2013

Vs

S.Thevaraj

... Respondent in both Crl.R.Cs.

Prayer in Crl.R.C.(MD)No.456 of 2013: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the Judgment, dated 21.12.2012, passed by the learned Principal District and Sessions Judge, Madurai in C.A.No.39 of 2012, confirming the Judgment of 08.08.2012 in S.T.C.No.81 of 2012 by the Judicial Magistrate No.2 (Fast Track Court) at Magisterial Level, Madurai acquit the accused and allow this criminal revision petition.

Prayer in Crl.R.C.(MD)No.457 of 2013: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the Judgment, dated 21.12.2012, passed by the learned Principal District and Sessions Judge, Madurai in C.A.No.40 of 2012, confirming the Judgment of 08.08.2012 in S.T.C.No.162 of 2012 by the Judicial Magistrate No.2 (Fast Track Court) at Magisterial Level, Madurai acquit the accused and allow this criminal revision petition.

For Petitioners : Mr.V.Mani Kandan(Legal aid Counsel

For Respondent : Mr.R.Gandhi

(in both Crl.R.Cs.)

COMMON ORDER

The complainant in S.T.C.No.81 of 2012 and 162 of 2012 on the file of the Judicial Magistrate No.2 (Fast Track Court) at Magisterial Level, Madurai, is one Thevaraj. R.S.Ramachandran is the accused in S.T.C.No.81 of 2012. While his wife Suseela is the accused in S.T.C.No.162 of 2012.

2.The case of the complainant is that Ex.P1 Cheque favouring the complainant was issued by the respective accused and that they were returned unpaid for the reason of insufficiency of funds. All the formalities set out in Section 138 of the Negotiable Instrument Act were complied with and only thereafter, the complaints were filed. The complainant examined himself as P.W.1 in both the cases



and marked Ex.P1 to Ex.P13. On the side of the accused, the sale agreement and the plaint in O.S.No.323 of 2005 were marked. The learned trial Magistrate found the respective accused in both the cases guilty of the offence under Section 138 of the Negotiable Instrument Act and sentenced them to undergo simple imprisonment for one year. The cheque amount was also ordered to be paid as compensation. Challenging the Judgment dated 08.08.2012, passed by the trial Magistrate, the accused filed Criminal Appeals Nos.39 of 2012 and 40 of 2012 before the Principal District and Sessions Judge, Madurai. The Appellate Court, by Judgments dated 21.12.2012 dismissed both the appeals. Questioning the same, these revision cases have been filed.

3.When the revision cases were taken up for disposal, there was no representation on behalf of the revision petitioners. This Court, therefore, appointed a Legal Aid Counsel to represent the revision petitioners. Today, when the matter was taken up for hearing, the learned Legal Aid Counsel appeared and reiterated the contentions set out in the memorandum of grounds.

4.Per contra, the learned counsel appearing for the complainant submitted that the Judgments passed by the Courts below do not warrant any interference.

5.I carefully considered the rival contentions and perused the evidence on record.

6.It is seen from the Court record that these revision petitions were filed without the revision petitioners surrendering before the Court below. In such a case, an application for exemption of surrender is taken out. But then, this Court, by order dated 04.06.2013, directed that the revision petitions ought to be posted before the Court only after the surrender of the petitioners. It appears that till date, the revision petitioners have not surrendered. This Court called upon the learned Government Advocate (crl.side) to make a statement with regard to the current whereabouts of the revision petitioners. The learned Government Advocate (Crl.side) informs the Court that the revision petitioners are no longer residing at the address mentioned in the revision petition. These revision petitions were filed way back in the year 2013. We are now in the year 2019.

7.I am of the view that no purpose will be served in keeping the revision petitions alive. This Court had already heard the learned Legal Aid Counsel on the merits of the matter. Therefore, I would rather dispose of the revision petitions on merits instead of adjourning the case indefinitely.

8.It is seen that the signatures attributed to the accused in the complaint cheques is not in dispute. When the cheques were presented and were dishonoured, the complainant issued statutory notices(Ex.P4). The notices were received by the accused. But then, they did not choose to respond. In these circumstances, the presumption under Section 139 of the Negotiable Instruments Act comes into play. The Courts below have concurrently found that the revision petitioners are guilty of the offences under Section 138 of



the Negotiable Instruments Act. I see no reason to take a different view. Therefore, the findings of guilt rendered by the Courts below in both STCs stand confirmed.

9. Now comes the question of sentence. I am of the view that the Judgments impugned in Crl.R.C.(MD)No.456 of 2013 deserves to be affirmed in toto. Accordingly, Crl.R.C.(MD)No.456 of 2013 stands dismissed. However, I am inclined to take a indulgent view in Crl.R.C.(MD)No.457 of 2013. The revision petitioner in Crl.R.C.(MD)No.457 of 2013 is the wife of the petitioner in the other Crl.R.C.(MD)No.456 of 2013. The complainant probably had dealt only with R.S.Ramachandran. Since the Suseela wife of Rama Chandran was an employee in the Public Works Department, probably her cheque was also obtained. Therefore, Suseela has been convicted and sentenced to undergo simple imprisonment for one year and also to pay the cheque amount of Rs.1,50,000/- as compensation. In this case, the complainant had already filed O.S.No.4 of 2006 on the file of the Sub Court, Virudhunagar. It is a suit for specific performance. It is submitted that the complainant had obtained a decree also and that, it is pending for execution at the E.P stage. Since Ramachandaran has already not only been sentenced to undergo one year simple imprisonment, but also directed to pay a sum of Rs.1,50,000/- as compensation, interest of justice will be served by confirming the conviction in respect of his wife, but then, sentencing her to pay a sum of Rs.5,000/- as fine. The imprisonment imposed on Suseela as well as direction to pay a sum of Rs.1,50,000/- is set aside. Suseela will only have to pay a sum of Rs.5,000/-. This indulgence is shown to Suseela, taking note of three aspects

(I) she is a women.

(II) Her husband has been sentenced to one year simple imprisonment and he has also been directed to pay a sum of Rs.1,50,000/- as compensation.

(III)The complainant had already obtained a decree from the Civil Court. Crl.R.C.(MD)No.457 of 2013 is partly allowed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Principal District and Sessions Judge, Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Judicial Magistrate No.2 (Fast Track Court) at Magisterial Level, Madurai.

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1 CC to M/s.V.MANIKANDAN, Advocate (SR-78433[F] dated 30/07/2019)

CrI.R.C.(MD)Nos.456 and 457 of 2013
29.07.2019

KK/SAR/04.09.2019/4P-6C/