

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 29.03.2019****CORAM:****THE HONOURABLE MR.JUSTICE M.DHANDAPANI****CRL.R.C. (MD) No.191 of 2019**

P.Thangiah

... Petitioner / Appellant / Complainant

-Vs-

S.R.Thavamani

... Respondent / Respondent / Accused

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the judgment passed in Crl.A.No.164 of 2017 dated 19.11.2018 on the file of the learned IV Additional District and Sessions Judge, Madurai, confirming the judgment passed in S.T.C.No.433 of 2012 dated 11.04.2017 on the file of the learned Judicial Magistrate No.I, Fast Track Court at Magisterial Level, Madurai and to set aside the same.

For Petitioner: Mr.N.Satheesh Kumar
for Mr.R.M.Anbunidhi

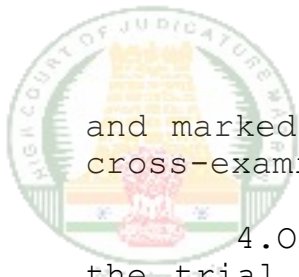
For Respondent: Mr.K.Jagadeesan

ORDER

The defacto complainant, who lost the case before the Courts below, has filed this revision petition before this Court.

2.The case of the complainant is that the accused is the grandson of complainant's maternal uncle Santhakumar. The accused borrowed a sum of Rs.30,00,000/- from the complainant on 02.12.2006 for his family expenses and for development of cinema business as hand loan. For which the accused issued a cheque to the complainant bearing No.NAE 304336 dated 02.05.2007 drawn on Indian Bank, Madurai Main Branch, requesting the complainant to present the same for collection on 18.07.2007 and release the amount. Accordingly, the complainant presented the cheque on 18.07.2007 through his bankers viz., Karur Vysya Bank Limited, Madurai Main Branch, Madurai for collection, which was returned with endorsement "not drawn on us / name of the branch office drawn on not marked" with a memo dated 19.07.2007. Hence, the complainant issued a statutory notice dated 24.07.2007, informing the accused about the dishonor of cheque and also demanded him to repay the cheque amount. The accused maneuvered to return the said notice and it has been returned on 18.08.2007. Hence, the present complaint is lodged before the learned Judicial Magistrate No.I, Fast Track Court at Magisterial Level, Madurai, against the accused for the offence of dishonor of cheque punishable under Section 138 r/w 142 of Negotiable Instruments Act (hereinafter referred as 'NI Act') and Sections 420, 467 and 471 IPC.

3.In order to prove the case, the complainant examined himself as P.W.1 and marked Exs.P.1 to P.6. In order to disprove the case of the complainant, the accused examined himself as D.W.1



and marked Exs.D.1 to D.5. Out of which, Ex.D.1 marked during the cross-examination of P.W.1.

4. On consideration of both oral and documentary evidence, the trial Court has held that the complainant failed to prove the guilt of the accused beyond reasonable doubt under Section 138 of NI Act and found the accused not guilty of offence of dishonor of cheque under Section 138 of NI Act and acquitted the accused.

5. On appeal in Crl.A.No.164 of 2017, the learned IV Additional District and Sessions Judge, Madurai, by its order dated 09.11.2018, dismissed the appeal, confirming the order of the trial Court.

6. Assailing the same, the unsuccessful private complainant is before this Court by filing this criminal revision petition.

7. The learned counsel appearing for the revision petitioner would submit that the accused and the private complainant are close relatives. Believing the words of the accused, the private complainant has given a sum of Rs.30,00,000/- as family expenses and cinema business. However, the accused did not repay the amount. In order to prove the legally enforceable debt, the letter of acknowledgment executed by the accused in favour of the complainant is marked as Ex.P.2 before the trial Court. However, the trial Court disbelieving the said document and accepting Exs.D.1 to D.5 erroneously dismissed the complaint and the Lower Appellate Court also confirmed the same, which is unsustainable one. The private complainant has discharged his initial burden. Now, it is for the accused to rebut the presumption with substantial evidence. However, there is no valid material marked before the trial Court in order to rebut the presumption. The documents relied upon before the trial Court by the accused are in the year 1999. After 5 years, the accused approached the complainant for borrowing the money for his family expenses and cinema business and considering the relationship in between them, he parted huge amount to the accused person. Accordingly, he prayed for conviction.

8. The learned counsel for the respondent / accused would submit that he is the distributor of Yogesh Kanna Cine Release and the accused and the private complainant were close relatives. In that capacity, the private complainant asked the accused to book Madurai Ramanathapuram area distribution rights of Asail Ore Kaditham film and paid a sum of Rs.15,00,000/- as advance and booked Madurai Ramanathapuram area rights of above film and asked the accused to take 20% commission in profit. The release of above film was delayed, hence, the private complainant on 11.11.1999 approached the accused to repay the above advance amount of Rs.15,00,000/-. The accused asked the private complainant to wait some times, but the complainant sent one Suresh and one Murugesan along with 10 persons to the office of the accused and they threatened the accused and caused damages to the office property of the accused. Hence, the accused lodged a complaint before Thilagar Thidal Police Station



against the private complainant and 10 other persons and the copy of the complaint is marked as Ex.D.2 and receipt is marked as Ex.D.3. After enquiry, the private complainant approached the accused for compromise and took the accused to his office and got two blank cheques and got signature in letter pad white paper and concur paper and took the accused to Chennai and asked the accused to execute the booking right of Asail Ore Kaditham film in favour of one Jayalakshmi, who is the mother of one Suresh. The accused also conceded to the demands of the private complainant and asked the private complainant to return back the blank papers and cheque obtained from the accused. But, the private complainant dodged the accused. In the meanwhile, the Asail Ore Kaditham film released on 17.12.1999. Since the private complainant executed Ex.D.1, the accused has dropped further action pertaining to the blank cheque and papers. The cheque in question issued prior to 2000. Hence, in the date portion, the number 19 was strikeout and written as 20, as if the cheque was issued in the year 2007.

9.He would further submit that the Courts below considering the documentary evidence Exs.D.1 to D.5 have dismissed the complaint filed by the private complainant and the same need not be interfered with, unless there is a overwhelming reason for interfering the order of Courts below. Hence, he prayed for dismissal.

10.On perusal of Exs.D.1 to D.3, it is seen that in an earlier occasion, the private complainant has entered into an agreement with the accused. There was a dispute in between them and the respondent / accused also made a complaint before Thilagar Thidal Police Station on 12.11.1999 and the same is marked as Ex.D.2, in which he indicated that he is the distributor of Yogesh Kanna Cine Release and he is the grandson of one Thangiah's / petitioner's herein maternal uncle by name Santhakumar. Thangiah has requested the respondent herein to purchase the cinema "Aasayil Ore Kadhitham" and paid a sum of Rs.15,00,000/-. However, the release of the said film was delayed and the said amount was paid to the producer of the said cinema. Hence, he is not able to procure the amount. Subsequently, there was a compromise entered into between them. In the meantime, one Suresh, who possessed the leasehold rights of Vellaikannu Cinema Theatre and one Murugesan along with 10 persons came to the office of the accused and threatened the accused and caused damages to the office property of the accused. The police officials of Thilagar Thidal Poilce Station had conducted investigation on the complaint preferred by the accused and the private complainant herein had appeared before the police station and agreed to close the entire issue. Therefore, an compromise was entered into between them on 23.12.1999.

11.When there was a serious litigation pending in between them, it is highly imaginary, as if the accused borrowed huge amount of Rs.30,00,000/- from the private complainant after five years and there is no proof to show that there was a legally enforceable debt



in favour of the petitioner. In the present case, earlier litigation pending between the accused and the private complainant and one Suresh, which is solved on 23.12.1999, was not informed to the Court. Suppressing the same, the private complainant has filed the complaint before the trial Court.

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12. Above all, it is well settled that an order of acquittal need not be interfered with by the Appellate Court, unless it is shown that an order of acquittal was rendered by the Lower Court by considering irrelevant materials or without application of mind to the relevant materials. In fact, the Hon'ble Supreme Court of India in **(Murugesan and others Vs. State through Inspector of Police) 2012 SCW 5627** held that in case of an appeal against acquittal, the presumption of innocence available to the accused has been reinforced by such order of acquittal and it need not be lightly interfered with. In yet another decision of the Hon'ble Supreme Court reported in **(Hydru Vs. State of Kerala) (2004) 13 SCC 374**, it was held that an order of acquittal need not be interfered with by the Higher Courts unless there is any procedural irregularity or material evidence has been overlooked or misread by the Subordinate Court.

13. Accordingly, this criminal revision petition is dismissed. The order of the learned IV Additional District and Sessions Judge, dated 09.11.2018 in Crl.A.No.164 of 2017, confirming the order of the learned Judicial Magistrate No.I, Fast Track Court at Magisterial Level, Madurai, dated 11.04.2017 in S.T.C.No.433 of 2012 is confirmed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1. The IV Additional District and Sessions Judge,
Madurai.
 2. The Judicial Magistrate No.I,
Fast Track Court at Magisterial Level,
Madurai.
 3. The Section Officer,
Criminal Section(Records)
Madurai Bench of Madras High Court,
Madurai.
- +1cc to Mr.K.Jagadeesan, Advocate, SR.No.57869