

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	30.08.2019
Date of Order	22.11.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.RC(MD)Nos. 199 and 200 of 2017
and
Crl.R.C(MD)Nos.49 and 50 of 2018

Thangam : Revision Petitioner/Respondent/Accused
in CRL RC(MD)Nos.199 and 200/2017
Vs.
Thirupathi : Respondent/Appellant/Complainant
in CRL RC(MD)Nos.199 and 200/2017

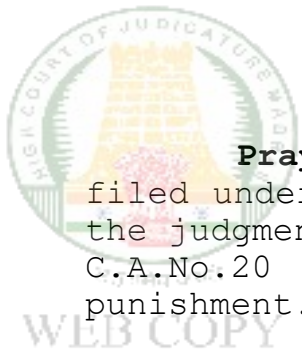
Prayer in Crl.RC(MD)No.199 of 2017: Criminal Revision is filed under section 397 r/w 401 of Criminal Procedure Code, against the judgment of the Principal District and Sessions Judge, Theni, in C.A.No.20 of 2015, dated 15.12.2006, reversing the judgment of the Judicial Magistrate Fast Track Court (M.L), Theni, in STC No.31 of 2014, dated 01.06.2015.

Prayer in Crl.RC(MD)No.200 of 2017: Criminal Revision is filed under section 397 r/w 401 of Criminal Procedure Code, against the judgment of the Principal District and Sessions Judge, Theni, in C.A.No.19 of 2015, dated 15.12.2006, reversing the judgment of the Judicial Magistrate Fast Track Court (M.L), Theni, in STC No.30 of 2014, dated 01.06.2015.

For Revision Petitioner : Mr.S.Ramasamy
(in both cases)
For Respondent : Mr.H.Arumugam
(in both cases)

T.Thirupathi : Revision Petitioner/Appellant/Petitioner
in CRL RC(MD)Nos.49 and 500/2018
Vs.
Thangam : Respondent/Respondent/Respondent
in CRL RC(MD)Nos.49 and 500/2018

Prayer in Crl.RC(MD)Nos.49 of 2018: Criminal Revision filed under section 397 r/w 401 of Criminal Procedure Code, against the judgment of the Principal District and Sessions Judge, Theni, in C.A.No.19 of 2015, dated 15.12.2006 and to impose adequate punishment.



Prayer in Crl.RC(MD)Nos.50 of 2018: Criminal Revision is filed under section 397 r/w 401 of Criminal Procedure Code, against the judgment of the Principal District and Sessions Judge, Theni, in C.A.No.20 of 2015, dated 15.12.2006 and to impose adequate punishment.

For Revision Petitioner : Mr.H.Arumugam
(in both cases)
For Respondent : Mr.S.Ramasamy
(in both cases)

COMMON JUDGMENT

Crl.R.C(MD)Nos.199 and 200 of 2017 have been filed by the accused against the judgment of the Principal District and Sessions Judge, Theni, passed in C.A.Nos.19 and 20 of 2015, dated 15.12.2006, reversing the judgment of the Judicial Magistrate Fast Track Court (M.L), Theni, in STC Nos.30 and 31 of 2014, dated 01.06.2015, whereas Crl.RC(MD)Nos. 49 and 50 of 2018 have been preferred by the complainant against the judgment of the Principal District and Sessions Judge, Theni, in C.A.No.19 and 20 of 2015, dated 15.12.2006 and to impose adequate punishment.

Crl.R.C(MD)Nos.199 of 2017 and 50 of 2018:-

2.The facts of the case is that the accused borrowed a sum of Rs.1,50,000/- on 30.05.2013 as hand loan from the complainant for the development of her business and to discharge her family debits and promised to repay the amount within a month and after one month, the accused gave a cheque No.276507, dated 30.05.2013 for a sum of Rs.1,50,000/- and when the same was placed for collection on 19.06.2013 through State Bank of India, Theni Branch, it was returned as "Insufficient Funds". In this regard, the complainant sent a legal notice dated 04.07.2013 to the accused to pay the amount and the accused after receiving the notice on 05.07.2013, gave a reply with false allegation. Hence, the complaint filed petition in STC No.31 of 2014 before the Judicial Magistrate Fast Track Court (M.L), Theni.

3.The trial court on proper appreciation of the entire materials available on record, both oral and documentary had passed an order, acquitting the accused from the charge levelled against him. Aggrieved by the judgment of the trial court, the complainant filed appeal before the first appellate court namely the Principal District and Sessions Judge, Theni. The learned Judge had given a finding by which convicting the accused by imposing a compensation of Rs.1,50,000/-, which has to be paid within a period of 3 months, in default the accused shall undergo 3 months simple imprisonment for the offence under section 138 of the Negotiable Instruments Act.



Aggrieved by the judgment of first appellate court, the accused as well as the complainant are before this court.

Crl.RC(MD)No.200 of 2017 and 49 of 2018:-

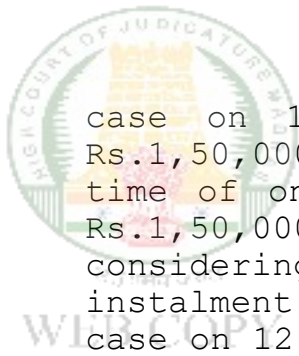
4.The facts of the case is that the accused borrowed a sum of Rs.1,50,000/- on 30.04.2013 as hand loan from the complainant for the development of her business and to discharge her family debits and promised to repay the amount within a month and after one month, the accused gave a cheque No.276506, dated 30.04.2013 for a sum of Rs.1,50,000/- and when the same was placed for collection on 22.05.2013 through State Bank of India, Theni Branch, it was returned as "Insufficient Funds". In this regard, the complainant sent a legal notice dated 04.07.2013 to the accused to pay the amount and the accused after receipt of the notice, gave a reply with false allegation. Hence, the complaint filed petition in STC No.30 of 2014 before the Judicial Magistrate Fast Track Court (M.L), Theni.

5.The trial court, on proper appreciation of the entire materials available on record, both oral and documentary had passed an order, acquitting the accused from the charge levelled against him. Aggrieved by the judgment of the trial court, the complainant filed appeal before the first appellate court namely the Principal District and Sessions Judge, Theni. The learned Judge had given a finding by which convicting the accused by imposing a compensation of Rs.1,50,000/-, which has to be paid within a period of 3 months, in default the accused shall undergo 3 months simple imprisonment for the offence under section 138 of the Negotiable Instruments Act. Aggrieved by the judgment of the first appellate court, both the accused and the complainant are before this court.

6.Heard both sides and perused the materials available on record.

7.Crl.RC(MD)Nos.199 and 200 of 2017 were filed as against the judgment passed by the first appellate court in C.A.Nos.20 of 2015 and 19 of 2015 respectively. The first appellate court set aside the order of acquittal and imposed the punishment to pay the cheque amount of Rs.1,50,000/- as compensation within a period of three months, in default of payment to undergo three months imprisonment in each cases. The accused challenging the punishment, preferred Crl.RC(MD)Nos.199 and 200 of 2017 and the complainant filed Crl.RC(MD)Nos.49 of 2018 and 50 of 2018 for enhancement of compensation as well as for imposing adequate conviction.

8.The above Crl.RC(MD)Nos.199 and 200 of 2017 and Crl.RC(MD) Nos.49 and 50 of 2018 were heard by this court on 11.09.2018 and after hearing the case on merits, the accused came forward to pay the cheque amount in two instalments, which was agreed by the complainant. Considering the same, this court adjourned the



case on 11.10.2018 enabling the accused to pay not less than Rs.1,50,000/- on or before 10.10.2018 and on such payment, further time of one month will be granted for paying remaining amount of Rs.1,50,000/-. The accused also paid a sum of Rs.1,50,000/- and on considering the payment, this court granted further time for second instalment of Rs.1,50,000/- on or before 10.12.2018 and posted the case on 12.12.2018. But the said amount was not paid and no petition was filed seeking extension of time before expiry of time granted by this court till date and therefore, the above settlement cannot be pressed and in spite of getting many adjournments, no payment was made. Therefore, on 17.07.2019, this court passed an order granting time till 31.07.2019 for payment and in default, the revisions filed by the accused shall be dismissed and even then also, no amount was paid.

9.The accused accepted the judgment and paid a sum of Rs.1,50,000/- and hence, the accused was estopped from arguing the case on merits. The accused admitted the issuance of cheque and he did not enter into the witness box. Hence, there was no rebuttal evidence on the side of the accused.

10.Further, the learned counsel for the complainant argued that the accused is working as a Steno-Typist in the Judicial Magistrate Court at Andipatti and the amount was borrowed to discharge her family debts and to develop the business of her husband and the accused knowing well about all the consequences of "Section 138 of N.I Act" failed to pay the amount and dragging on the proceedings for about 6 years and the conduct of the accused cannot be appreciated since being the Steno-Typist in the Judicial Magistrate Court, she knows well about the procedure and knows the consequence of default of paying the compensation amount and that too on paying part amount, but she did not come forward even to seek extension of time and as such, this court cannot rescue her from the consequences and the amount was borrowed on 30.05.2013 for commercial purpose and therefore, 24% of interest per annum is a normal rate of interest, which would be Rs.4,50,000/- and along with the principal, the total amount is Rs.7,50,000/- and the compensation under "Section 357(3)" of Cr.P.C must to compensate the loss or injury suffered by the accused and the payment of compensation under "Section 357(3) of Cr.P.C shall be taken into account by the court awarding compensation in any subsequent civil suit relating to the same matter as compensation under Section 357 (3) of Cr.P.C and therefore, as stated above the cheque amount with interest upto this date comes to a sum of Rs.7,50,000/-, whereas the double the cheque amount is only Rs.3,00,000/- in each case, totalling Rs.6,00,000/- and therefore, ordering double the cheque amount as compensation is just and proper. For that, the learned counsel appearing for the complainant submitted a ruling reported in ***H.Pukhraj Vs. D.Parasmal (2015)17 SCC 368*** , wherein it is held as follows:-



5.The learned counsel for the appellant severally assailed the impugned judgment. He submitted that the impugned order may be set aside and the respondent may be adequately punished and substantial compensation amount may be directed to be paid to the appellant. The learned counsel for the appellant urged that this Court should ask the respondent to pay double the cheque amount to the appellant. The learned Amicus Curiae, on the other hand, submitted that no interference is necessary with the impugned order.

12.The total amount covered by the cheques involved in the present two cases was Rs.4,50,000/-. There is no case for the respondent that the said amount had been paid either during the pendency of the case before the trial court or revision before the High Court or this Court. If the amounts had been paid to the complainant there perhaps would have been justification for imposing a flea-bite sentence as had been chosen by the trial court. But in a case where the amount covered by the cheque remained unpaid it should be the lookout of the trial Magistrates that the sentence for the offence under Section 138 should be of such a nature as to give proper effect to the object of the legislation. No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light-heartedly. The very object of enactment of provisions like Section 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount at least during the pendency of the case."

11.On coming to the instant cases on hand, the complainant also accepted the settlement and received part amount. Hence, the complainant is estopped to ask for enhancing the punishment of the accused.

12.For all the reasons stated above, this court is of the considered view that the petitioners in all the criminal revisions are not entitled to the relief as sought.

13.In the result, all the criminal revisions are **dismissed**.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



Er
To

1. The Principal District and Sessions Judge,
Theni

2. The Judicial Magistrate,
Fast Track Court(M.L.), Theni

3. -Do- Through The Chief Judicial Magistrate,
Theni

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

+1.CC. To Mr.H.Arumugam, Advocate in SR No.100874

Crl.RC(MD)Nos.199 and 200 of 2017
and
Crl.R.C(MD)Nos.49 and 50 of 2018
22.11.2019

MK (20.02.2020) 6P 7C