



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.R.C(MD).No.364 of 2011

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M. Rajaiah

... Petitioner

Vs

Muthukannan

... Respondent

PRAYER: Petition filed under Section 397 r/w 401 Code of Criminal Procedure, to call for the entire records relating to the Judgment of the Additional Sessions Judge, Madurai, Fast Track Court No.I, Madurai passed in C.A.No.44 of 2010 dated 22.02.2011 confirming the conviction and sentence passed by the District Munsif-cum-Judicial Magistrate No.I, Usilampatti in C.C.No.102 of 2003 dated 25.05.2010 and set aside the same by allowing the present Criminal revision petition.

For Petitioner : Mr.S. Ramasamy

For Respondent : Mr. M. Saravanan

ORDER

The petitioner was accused of having committed the offence under Section 138 of Negotiable Instruments Act in C.C.No.102 of 2003, on the file of the learned District Munsif-cum-Judicial Magistrate No.I, Usilampatti, filed by the respondent herein.

2. The learned trial Magistrate by its Judgment dated 25.05.2010 found the petitioner guilty of the said offence and sentenced him to undergo one year Rigorous Imprisonment and also levied a fine of Rs..2,000/- in default of payment of fine 3 months Simple Imprisonment was also imposed. Questioning the same, the petitioner filed CrI.A.No.44 of 2010, before the Additional Sessions Judge, Madurai, Fast Track Court No.I, Madurai. By Judgment dated 22.02.2011, the lower appellate Court dismissed the Criminal Appeal. Challenging the same, the Criminal Revision Case has been filed.

3. The learned counsel appearing for the revision petitioner reiterated the contentions set out in the memorandum of grounds.

4. The learned counsel appearing for the complainant on the other hand supported the Judgments passed by the Courts below.



5. I carefully considered the rival submissions made by the learned counsel on either side and perused the materials available on record.

6. The case of the complainant is that the accused issued Ex.P1- cheques towards discharge of his liability. According to the complainant, accused had borrowed a sum of Rs.2,40,000/- from him some two years ago. Ex.P1 - cheques were issued towards discharge the said liability. The cheques were presented by the complainant with his Banker viz., Canara Bank. But, the cheques were returned with an endorsement "in-sufficient funds". Thereafter, Ex.P3 notice was issued by the complainant. But, the accused did not receive the same and therefore, the covers were returned. The returned covers marked as Ex.P4.

7. It is true that the accused examined himself as DW.1. The case of the accused is that he did not receive statutory notice and that therefore that has been non-compliance with the requirements set out in Section 138 of the NI Act. But, then, the said contention was rightly rejected by the Courts below. This was because this complainant can only send the notice to the address of the accused. If the accused refused to receive the same, the cover will be returned to the complainant. Therefore, it is not the case of the accused that the address mentioned in Ex.P4 - cover was an in-correct one. The accused also claimed that the complaint cheques were stolen and that they have been misused. This is a flimsy defence.

8. The signatures found in Ex.P1 - cheques are attributed to the accused and that has not been denied. When the cheques belong to the accused, there is no explanation as to how the same reached the complainant. Therefore, both the defences preferred by the accused were rightly rejected by the Courts below.

9. I find no ground to interfere with the findings of the Courts below.

9. In such circumstances, the learned counsel appearing for the petitioner states that some indulgence can be shown in the matter of sentence.

10. It is seen that the Courts below only sentenced the petitioner to undergo Rigorous Imprisonment for a period of one year and levied a fine and no compensation was awarded. Therefore, the sentence imposed by the Courts below are set aside. The petitioner is directed to pay the cheque amount of Rs.2,40,000/- (Rupees Two Lakhs Forty Thousand) to the complainant as compensation. The petitioner shall deposit the said amount to the credit of C.C.No.102 of 2003 on the file of the District Munsif-cum-Judicial Magistrate No.I, Usilampatti, within a period of twelve weeks from the date of receipt of a copy of this order. In the event of the revision petitioner failing to deposit the said amount, the sentence



imposed by the Courts below will be restored automatically.

11. With the above modification, the Criminal Revision Case is partly allowed.

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Sd/-

Assistant Registrar (Crl Side)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Additional Sessions Judge, Madurai, Fast Track Court No.I, Madurai

2. The District Munsif-cum-Judicial Magistrate No.I, Usilampatti.

+1 CC to M/s.M.SARAVANAN, Advocate (SR-68443[F] dated 13/06/2019)

+1 CC to M/s.S.RAMASAMY, Advocate (SR-68591[F] dated 13/06/2019)

Crl.R.C(MD).No.364 of 2011
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