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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.1301 of 2012

Sait Kumar

..Petitioner/Appellant/Accused

Vs.

Palanisamy

..Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 03.02.2011 passed in C.C.No.376 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 14.08.2012 passed in C.A.No.63 of 2012 on the file of the I Additional District and Sessions Court, Erode.

For Petitioner : Mr.M.Guruprasad

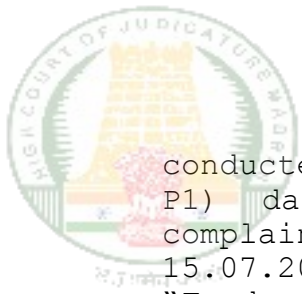
For Respondent : Mr.P.Sabari

ORDER

This petition has been filed seeking to set aside the judgment and order dated 03.02.2011 passed in C.C.No.376 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 14.08.2012 passed in C.A.No.63 of 2012 on the file of the I Additional District and Sessions Court, Erode.

2. For the sake of convenience, the petitioner and the respondent will be referred to as accused and complainant, respectively.

3. It is the case of the complainant that the accused and he are building contractors; they decided to develop three plots; towards the same, they entered into an agreement dated 01.06.2004, under which, the complainant gave a sum of Rs.1,50,000/- to the accused for purchase of plots; three plots were purchased and it was agreed that the complainant will build row houses and take back the sum of Rs.1,50,000/- from the accused; the complainant was not able to complete the construction and so, the accused accepted to complete the construction; however, a dispute arose between the accused and the complainant, pursuant to which, the accused lodged a complaint in Modakurichi Police Station, where, an enquiry was



conducted, in which, the accused gave the impugned cheque (Ex-P1) dated 10.02.2005 for a sum of Rs.1,50,000/- to the complainant; the complainant presented the said cheque on 15.07.2005 and it was returned unpaid with the endorsement "Funds Insufficient" vide bank's return memo (Ex-P2) dated 20.07.2005; therefore, the complainant issued a statutory demand notice (Ex-P4) dated 29.07.2005, which was returned unserved; since the accused did not pay the amount, the complainant initiated a prosecution in C.C.No.17 of 2006 before the Judicial Magistrate No.VI, Coimbatore, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused. Thereafter, the case was transferred to the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore and re-numbered as C.C.No.376 of 2011.

4. Before the trial Court, the complainant examined himself as PW1 and marked five exhibits.

5. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. Before the trial Court, the accused examined himself as DW1 and marked four exhibits.

6. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 03.02.2012 in C.C.No.376 of 2011, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.4,000/-, in default to undergo two months simple imprisonment.

7. The appeal in C.A.No.63 of 2012 filed by the accused was dismissed by the I Additional District and Sessions Court, Coimbatore, on 14.08.2012.

8. Challenging the concurrent findings of fact arrived at by the Courts below, the accused has filed the present revision invoking Section 397 r/w 401 Cr.P.C.

9. At the time of admission of this criminal revision, this Court, by order dated 15.10.2012 in CrI.M.P.No.1 of 2012 in CrI.R.C.No.1301 of 2012, suspended the substantive sentence of imprisonment and granted bail on condition that the accused should deposit a sum of Rs.75,000/- before the trial Court. Accordingly, the accused deposited the said amount before the trial Court vide Receipt No.100901 dated 09.11.2012.



"Today, the petitioner/accused is present before this Court.



return the said amount after the complainant completes the construction in plot nos.18, 19 and 20. This has been clearly stated in Ex-D1, which was marked through the complainant in the cross-examination. The complainant has admitted that he was not able to complete the project and he had obtained the impugned cheque (Ex-P1) from the accused in the police station.

15. The accused can discharge the burden under Section 139 of the NI Act by preponderance of probability as held by the Supreme Court in Rangappa Vs. Sri Mohan<sup>1</sup>. In this case, the accused has done that, inasmuch as the complainant had made a false averment in the complaint, as if, he had entered into an agreement dated 01.06.2004 with the accused, whereas, it has been established that no such agreement was ever entered into.

16. That apart, in Ex-D1, it is clearly stated that the complainant will present the cheque (Ex-P1) only after the construction is over. Admittedly, the construction was not over, despite which, the complainant has presented the cheque (Ex-P1), because, the cheque (Ex-P1) was dated 10.02.2005 and it would expire within six months.

17. In the opinion of this Court, both the Courts below have failed to appreciate the evidence on record in the proper perspective.

18. The learned counsel for the accused fairly submitted that the accused owes a sum of Rs.1,50,000/- to the complainant and the complainant may withdraw the amount that has been deposited in the trial Court.

19. In view of the principled stand taken by the accused that a sum of Rs.1,50,000/- should go to the complainant, this Courts directs the trial Court to disburse the sum of Rs.1,50,000/- to the complainant, without notice to the accused, but, on proper identification by the counsel along with proof of identity.

In fine, this criminal revision is allowed by setting aside the judgment and order dated 03.02.2011 passed in C.C.No.376 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Coimbatore, confirmed by the judgment and order dated 14.08.2012 passed in C.A.No.63 of 2012 on the file of the I Additional District and Sessions Court, Erode. As a sequel, the accused is acquitted of the charge under Section 138 of the NI Act. The bail bond executed by the accused shall stand

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<sup>1</sup> (2010) 11 SCC 441



cancelled. Fine amount, if any, paid by the accused shall be refunded.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

To

1. The Judicial Magistrate,  
(Fast Track Court No.II),  
Coimbatore.
2. The I Additional District  
and Sessions Judge,  
Erode.
3. The Deputy Registrar  
(Crl.Section),  
Madras High Court,  
Chennai - 600 104.

} with a direction to return the  
original records to the Courts  
below concerned

+1 cc to M/s.G.K.Muthukumar,Advocate Sr.No. 1239  
+1 cc to M/s.M.Guruprasad,Advocate Sr.No. 1555

AKM/09.01.2020/5P-6 C /

Crl.R.C.No.1367 of 2012