

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.No.1405 of 2016
& Crl.M.P.Nos.12293 to 12295 of 2016

G.Selvaraj

.. Petitioner

Vs

R.Karuppannan

.. Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of the Code of Criminal Procedure, seeking to set aside the conviction imposed on the judgment dated 23.08.2016 made in Crl.A.No.29 of 2015 on the file of the Principal Sessions Court, Namakkal, confirming the conviction imposed in the judgment dated 17.06.2015 made in S.T.C. No.119 of 2014 on the file of the Judicial Magistrate, Fast Track Court, Tiruchengode.

For Petitioner : Mr.N.Manokaran

For Respondent : No appearance

ORDER

The petitioner questioned the concurrent findings of conviction and sentence passed by the Courts below in this revision.

2.The allegation against the petitioner/accused is that he borrowed a sum of Rs.98,500/- from the respondent/complainant on 21.07.2014, and issued a post-dated cheque bearing No.006735, dated 21.08.2014 drawn on Corporation Bank, Pallipalayam Branch. When the cheque was presented for collection on 01.07.2013, it was returned with an endorsement "Funds Insufficient". It is also alleged that the statutory notice dated 09.09.2014 was sent to the petitioner/accused, which he had not claimed. Thus, no reply was sent by the petitioner. It is further alleged that the petitioner/accused issued the cheque knowingly well that he has no funds in his account and only to cheat the complainant. Hence, the respondent/complainant has no other option except to file the private complaint, which culminated in S.T.C.No.119 of 2014 on the file of the Judicial Magistrate, Fast Track Court, Tiruchengode.

3.Before the trial Court, the complainant examined himself as P.W.1 and marked Exs.P.1 to P.4 documents, whereas the revision petitioner / accused, though marked Ex.D.1 - Legal notice, did not examine any witness.

4.Upon detailed appreciation of the oral and documentary evidence adduced by the parties, the Trial Court convicted the petitioner/accused for the offence under Section 138 of the Negotiable Instruments Act, 1881, and sentenced him to undergo three months simple imprisonment and to pay a sum of Rs.5,000/- as fine, in default, to undergo one month simple imprisonment, vide judgment dated 17.06.2015. The said judgment was challenged by the petitioner/accused by filing an appeal in CrI.A.No.29 of 2015. The appellate Court, viz., the Principal Sessions Court, Namakkal, vide judgment dated 23.08.2016, dismissed the said appeal and thereby, confirmed the judgment of conviction and sentence passed by the trial Court. Both the judgments are sought to be challenged in this revision by the petitioner/accused.

5.Learned counsel for the petitioner submitted that there is absolutely no evidence on record to prove the transaction between the parties and also there is no legally enforceable debt on the part of the petitioner. It is also submitted that there are vital discrepancies in the version of the complainant. However, the trial Court wrongly fastened the liability on the petitioner and the defence raised by the petitioner/accused was not at all appreciated by the trial Court in accordance with law and the appellate court, which has to appreciate the facts, has also failed to discharge its duty and thus, both the judgments suffer from infirmities and inconsistencies warranting interference of this Court.

6.Heard the learned counsel for the petitioner and perused the materials available on record. Despite the service of notice and the name of the respondent having been printed in the cause list, there is no representation on his behalf.

7.The stand of the petitioner/accused is that he never borrowed money and issued the cheque in question to the complainant. Though the petitioner denied his signature in the subject cheque, he admitted that the cheque leaf was that of his account. The trial Court considered the said defence and held that the petitioner/accused had not taken any steps to send the said cheque for comparison to any expert, but merely claimed that the said cheque was misused by the complainant and the same is fatal to his defence. The Trial Court also held that the petitioner / accused failed to rebut the presumption by preponderance of probabilities. The Trial Court further held

that the accused evaded the notice and the conduct of such bare denial raises doubt about the genuineness of his defence. Hence, the trial Court concluded that the respondent/ complainant proved the legally enforceable debt or liability, whereas the petitioner/accused failed to rebut the presumption under Section 139 of the Act and ultimately, convicted the petitioner/accused and sentenced him for the offence under Section 138 of the Act.

8.The Appellate Court has also dealt with the case properly and correctly confirmed the findings rendered by the trial Court on merits.

9.This Court finds no reason much less valid reason to interfere with the concurrent findings so rendered by the Courts below. Further, it is settled law that while exercising revisional jurisdiction, this Court cannot re-appreciate the evidence like a Court of appeal, unless it is shown that the findings on facts arrived at by the Courts below are on the face on it perverse.

10.In fine, this revision is dismissed being devoid of merits. Consequently, connected Miscellaneous Petitions are closed. The trial Court is directed to secure the petitioner/accused and commit him in prison to undergo the remaining period of sentence, if any. If any amount has been deposited by the accused either in the appellate Court or in the trial Court in connection with this case, the same shall be disbursed with accrued interest to the complainant or to his legal heirs, as the case may be.

11.It is always open to the parties to file an application before the trial Court under Section 147 of the NI Act for compounding the offence, even after the accused is taken into custody. In the event of the matter being compounded under Section 147, ibid. before the trial Court, the Magistrate shall send a report to the Assistant Registrar (Crl. Side), who shall make it form part of the records in this criminal revision. The Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-
Assistant Registrar(CS)

//True copy//

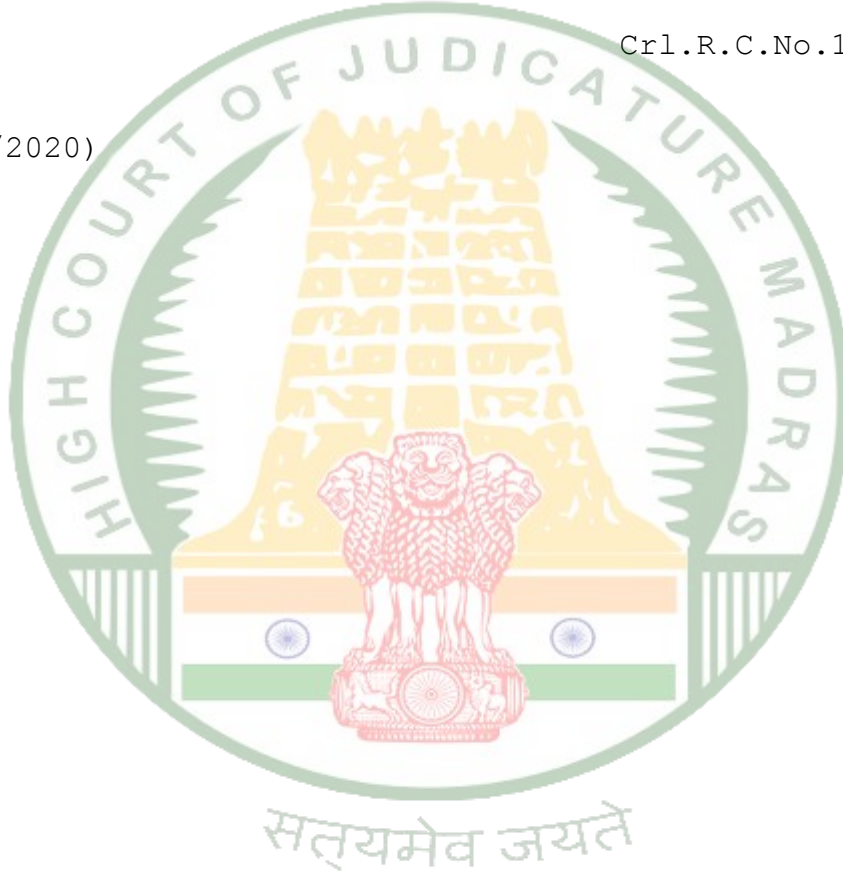
Sub Assistant Registrar

To

1. The Principal Sessions Judge, Namakkal.
 2. The Judicial Magistrate, Fast Track Court,
Tiruchengode.
 3. The Section Officer,
Crl Section, High Court, Madras.
- +lcc to Mr.N.Manokaran, Advocate SR.No.13884

Crl.R.C.No.1405 of 2016

BR(CO)
GMY(27/07/2020)



WEB COPY