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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.No.1709 of 2016

C.Sundaramoorthy ... Petitioner/Appellant/Accused

Vs

N.Sivakumar ... Respondent/Respondent/Complainant

Prayer: Criminal Revision filed under Section 397 and 401 of the Code of Criminal Procedure, seeking to call for the records on the file of the learned III Additional Sessions Judge, Vellore at Thiruppathur, Vellore District, in Crl.A.No.22 of 2014 dated 15.11.2016 against the judgment and sentence passed in C.C.No.130 of 2012 on the file of the learned Additional District Munsif-cum-Judicial Magistrate, Ambur, Vellore District, dated 03.04.2014 and set aside the judgment dated 15.11.2016.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.C.Prabakaran

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.2,00,000/- from the respondent/complainant on 29.03.2012, and issued a post-dated cheque bearing No.102585, dated 02.04.2012. When the cheque was presented for collection, it was returned with an endorsement "insufficient funds" on 13.04.2012. It is also alleged that the statutory notice dated 12.05.2012 was served on the petitioner/accused demanding the due and even thereafter, no repayment was made. Hence, the respondent/ complainant has filed the private complaint in S.T.C.No.130 of 2012 before the trial Court, viz., Additional District Munsif-cum-Judicial Magistrate Court, Ambur.



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3. Before the trial Court, the complainant examined himself as P.W.1 and also examined P.W.2 and marked Exs.P.1 to P.5 documents, while the revision petitioner/accused examined himself as D.W.1 and marked Exs.D.1 to D3 documents.

4. Upon 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.2,00,000/- as compensation, vide judgment dated 03.04.2014. The said judgment was challenged by the petitioner/accused by filing an appeal in CrI.A.No.22 of 2014. The appellate Court, viz., the III Additional Sessions Court, Vellore at Thirupatur, vide judgment dated 15.11.2016, 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 the trial Court, without considering the materials placed by the petitioner / accused properly imposed the conviction and sentence 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. On the other hand, the learned counsel for the respondent/complainant submitted that the Trial Court considered all the materials and evidence and passed the impugned judgment and the findings of the trial Court have been rightly confirmed by the Appellate Court and hence, the judgments of the Courts below do not require any interference in the hands of this Court.

7. Heard the learned counsel for the parties and perused the materials available on record.

8. The case of the petitioner/accused is that the complainant is his friend and he used to come to his house oftenly and taking advantage of the situation, he stole five blank cheques and signed blank promissory note. When the petitioner/accused questioned the complainant, using one of the cheques, he foisted a false case. The Courts below, having regard to the fact that the accused failed to give any specific date and time and also failed to examine any independent witness to substantiate the said allegation, held that the said defence was not probable defence to absolve the accused from this case. Having appreciated the oral and documentary evidence, the trial Court held that the accused is guilty of the offence under



Section 138 of the Negotiable Instruments Act, 1881 and convicted and sentenced him, as stated supra. The Appellate Court has also dealt with the case properly and correctly confirmed the findings rendered by the trial Court on merits.

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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. 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

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional Sessions Judge,
Vellore at Thiruppathur,
Vellore District.
2. The Additional District Munsif-cum-
Judicial Magistrate,
Ambur, Vellore District.



Copy to

1.The Assistant Registrar(Criminal Side)
High Court, Madras.

2.The Section Officer,
Criminal Section, High Court, Madras.

+lcc to Mr.C.Prabakaran, Advocate Sr.13848

+lcc to Mr.E.Kannadasan, Advocate Sr.13701

Cr1.R.C.No.1709 of 2016

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srg 01/07/2020