

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Crl.RC.No.251 of 2014

Mahesh V.K.

...

Petitioner/Accused

Vs.

N.P.Vinodan

...

Respondent/complainant

Prayer: Criminal Revision has been filed under section 397(1) & 401 CrI.P.C. against the judgment of the learned II Additional Sessions Judge, Puducherry made in C.A.No.23 of 2010 dated 30.08.2013 confirming the conviction and the payment of compensation passed by the learned judicial Magistrate (Sub Judge) at Mahe made in STR No.183 of 2008 dated 21.09.2010 convicting the petitioner under Section 138 of Negotiable Instruments Act and directing him to pay compensation of Rs.3,00,000/- under Section 357(3) of Cr.P.C to the complainant in default of paying compensation the accused is directed to undergo simple imprisonment of 6 months.

For Petitioner : Mr.V.Senthil Murugan

For Respondent : Mr.C.Vijaykumar

O R D E R

The Revision petitioner/accused has been convicted by the Judicial Magistrate (Sub Judge), Mahe, by judgment dated 21.09.2010 passed in STR No.183 of 2008 for the offence under Section 138 of the Negotiable Instrument Act and sentenced to undergo simple imprisonment for three months and to pay compensation of Rs.3,00,000/- under Section 357 (3) of Cr.P.C to the complainant and in default of paying the compensation, directed him to undergo simple imprisonment for six months.

2.Challenging the abovesaid judgment of the trial Court, the appeal has been preferred by the revision petitioner in criminal appeal No.23 of 2010 on the file of the II Additional Sessions Court, Puducherry. The appellate Court, on appreciation of the

materials available on record, both oral and documentary and the submissions made, held that the accused has committed the offence punishable under Section 138 of the Negotiable Instrument Act. However, noting that the imposition of compensation alone is sufficient and on that basis, set aside the sentence of three months of simple imprisonment imposed on the accused by the trial Court and thereby, partly allowed the appeal preferred by the accused by sustaining the conviction under Section 138 of the Negotiable Instrument Act and directed him to pay a compensation of Rs.3,00,000/- in default to undergo six months simple imprisonment. Challenging the same, the present criminal appeal has been preferred.

3.The case of the complainant seems to be that the accused borrowed a sum of Rs.3,00,000/- from him and issued a cheque after three days of the borrowal and when the said cheque was presented for collection, the same got bounced. Therefore, according to the complainant, the accused is liable to be punished for the offence under Section 138 of the Negotiable Instrument Act.

4.In support of the complainant's case, PW1 was examined and Exs.P1 to P6 were marked. On the side of the accused, DW1 was examined and Exs D1 to D3 were marked.

5.As abovestated, the Courts below, on appreciation of the materials available on record, found the accused guilty under Section 138 of the Negotiable Instrument Act and the appellate Court had directed him to pay the compensation of Rs.3,00,000/- in default to undergo simple imprisonment for six months.

6.The accused counsel contended that the cheque had been issued by the accused in favour of one Rineesh on behalf of the complainant, who is his relative and therefore, according to him, he has not issued the cheque to the complainant for any civil liability and further, according to the accused, he had also lodged a complaint against the complainant and Rineesh with reference to the same. However, as rightly determined by the Courts below, when the accused has not disputed the signature found in the cheque and in such view of the matter, whether the amount lent by the complainant to the accused was at Mahe or Vadakara plays no significant role and in particular, when the cheque issued by the accused had been presented for collection by the complainant at South Indian Bank, Mahe and the same had been returned with an endorsement "insufficient funds". The return memo had been marked as Ex.P2. In such view of the matter, it is found that the trial Court had the jurisdiction to try the suit and therefore, the question of jurisdiction raised by the accused counsel for non suiting the case of the

complainant as such cannot be accepted.

7.It is also noted that a contention has been raised by the accused to send the cheque in question for handwriting expert's scrutiny on the ground that the contents of the cheque are being disputed. However, as determined by the courts below, when the execution of the cheque in question has not been disputed by the accused and when the holder of the cheque is entitled to fill up the contents of the cheque, in such view of the matter, as rightly determined by them, there is no necessity to ascertain as to who wrote the contents of the cheque and in such view of the matter, the Courts below had rightly discountenanced the above plea set up by the accused for dismissing the complainant's case.

8.As above noted, the accused would only put forth the defence that he had borrowed a sum of Rs.10,000/- from one Rineesh and only as a security for the same, he had issued the cheque and the same had been misused by the complainant and Rineesh on account of the Rent Control Proceedings pending between them. However, as rightly held by the Courts below, there is no proof placed on the part of the accused worth acceptance that there is any money dealing between the accused and Rineesh. Further, if really, the accused had given the cheque to Rineesh as security, as a prudent person, he would have given a complaint against them in the manner known to law or if Rineesh had misused the same, would have endeavoured to file necessary complaint against him in the manner known to law. However, the accused had not placed any material pointing to the same and therefore, it is found that the abovesaid defence version projected by the accused had been rightly disbelieved by the Courts below. When the cheque in question had been issued by the accused and the same had not been disputed by the accused, in such view of the matter, it is for the accused to establish that the cheque had not been issued towards debt or liability and the accused having failed to establish the same, in all, the courts below are right in holding that the cheque in question had been issued only for the debt or liability on the part of the accused and the cheque issued by the accused having got bounced, it is seen that the complainant's case had been rightly upheld by the Courts below.

9.The defence has also been taken by the accused that the complainant had no sufficient means to lend the amount in question. However, to establish the same, the complainant has marked Ex.P6, Receipt issued by the Manappuram General Finance and Lease Ltd., for pledged jewels. Therefore, when the complainant has established his means to lend the amount satisfactorily, there is no need for him to produce account books to sustain the same. Further, in all, it is seen that the

courts below had also upheld the solvency of the complainant in lending the amount to the accused and accordingly, it is seen that the Courts below had rightly held only for the amount received from the complainant, the accused had issued the cheque and the same having been dishonoured, the accused had proceeded to raise untenable defences without any basis and accordingly, the same had been rightly rejected by the Courts below.

10.In all, it is found that the Courts below had rightly upheld the conviction of the accused under Section 138 of the Negotiable Instrument Act and the appellate Court is found to be justified in directing the accused to pay the compensation of Rs.3,00,000/- for the same in default to undergo 6 months simple imprisonment alone and I do not find any valid reason to interfere with the abovesaid determination of the appellate Court.

11.In conclusion, the criminal revision fails and is accordingly dismissed. The trial Court is directed to secure the presence of the revision petitioner /accused to undergo the sentence imposed on him in the manner known to law.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sms

To:

- 1.The learned II Additional Sessions Judge, Puducherry.
- 2.The learned judicial Magistrate (Sub Judge) at Mahe.
3. The Public Prosecutor, High Court, Madras.

+2ccs to Mr.V.Senthil Murugan, Advocate, S.R.No.20607/2020
+1cc to Mr.C.Vijaykumar, Advocate, S.R.No.19811/2020

Cr1.RC.No.251 of 2014

rji(CO)
jrs(29/05/2020)