

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Crl.R.C.No.164 of 2017
and Crl.MP.Nos.1884 and 1886 of 2017

S.Saravanan

...Petitioner

Vs.

L.Venkatachalam

...Respondent

Prayer: Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code seeking to set aside the judgment dated 20.10.2017 made in Crl.A.No.13 of 2016 on the file of the learned Principal Sessions Judge, Namakkal, confirming the judgment dated 13.04.2016 made in S.T.C.No.141 of 2015 on the file of the Judicial Magistrate, Fast Track Court, Thiruchengode.

For Petitioner : Mr.M.Guruprasad

For Respondent : Ms.V.Suguna, Legal Aid Counsel

O R D E R

The petitioner herein is the accused and the respondent herein is the complainant. On the basis of the private complaint given by the respondent, the petitioner faced trial for the offence under Section 138 of the Negotiable Instruments Act in STC.No.141 of 2015 on the file of the learned Judicial Magistrate (Fast Track Court), Tiruchengode. By judgment dated 13.04.2016, the trial Court found the petitioner guilty of the said offence and accordingly convicted for the same and sentenced him to undergo simple imprisonment for six months and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for a further period of one month. Challenging the same, the petitioner preferred an appeal in Crl.A.No.13 of 2016 before the learned Principal Sessions Judge, Namakkal, which ended in dismissal. Aggrieved over the same, the petitioner has filed this Criminal Revision Case.

2.The learned counsel for the petitioner has submitted that the trial Court failed to note that the respondent has no sufficient means to pay Rs.2,25,000/- to the petitioner and he did not file any document to prove his capacity to pay the said amount. He also submitted that even though the case of the respondent is only on the basis of Exs.P1 and P3/cheques, he failed to prove the very execution of the same. Stating so, the learned counsel prayed for allowing this revision by setting aside the judgments impugned herein.

3.The learned counsel appearing for the respondent has submitted that the trial Court has correctly considered the materials and evidence and has 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.

4.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

5.It is the case of the respondent/complainant that the petitioner borrowed a sum of Rs.2,25,000/- from the respondent as hand loan and issued two post dated cheques bearing Nos.432982 and 019004 dated 12.05.2015 for Rs.1,00,000/- and Rs.1,25,000/- respectively. When the respondent presented the said cheques for collection, the same were returned dishonoured with an endorsement "funds insufficient" and "accounts closed" respectively on 12.05.2015. The respondent sent a legal notice on 08.06.2015 calling upon the petitioner to repay the amount mentioned in the cheques within a period of 15 days. Though the petitioner received the notice on 09.06.2015, he failed to send reply nor repaid the amount. Hence, the respondent filed the private complaint against the petitioner for the offence under Section 138 of the Negotiable Instruments Act. To prove the same, the respondent examined himself as P.W.1 and marked Exs.P1 to P6 documents.

6.It is the case of the petitioner/accused that the cheques were not given by him directly to the respondent, but the same were given only on the advice of one Sakthivel, who is the friend of the respondent. After the amount has been paid by him along with interest in the year 2015, the cheques in question were not returned by the respondent and the same was also questioned by the petitioner to the said Sakthivel. On receipt of the legal notice, he came to know that the respondent misused the said cheques and preferred the private complaint. To substantiate his defence, the petitioner examined himself as DW1, besides examining the said Sakthivel as DW2, but no document was marked.

7. From the materials and evidence adduced by the parties, it is established that the petitioner has not disputed the issuance of cheques in question and his signatures found therein. As such, a presumption under Section 139 of the Negotiable Instruments Act is drawn in favour of the complainant that the cheques in question were issued to the respondent for discharging the legally enforceable debt against the petitioner. In the said circumstances, the petitioner has to rebut the same by preponderance of probabilities. On the side of the defence, DW1 and DW2 were examined, but nothing was elicited from the same to the effect that the petitioner has repaid the loan amount to the respondent. Though DW2/Sakthivel has deposed about the issuance of cheques in question to the respondent through him and non-returning the same to the petitioner, the trial Court has disbelieved the same, observing that due to enmity with the respondent, the said Sakthivel would help the petitioner by giving evidence on his side. Further, the petitioner did not send any reply denying the allegations raised in the legal notice issued by the respondent. Moreover, he did not file any police complaint against the respondent for non-returning the cheques in question. Hence, the trial Court has rightly concluded that the petitioner failed to rebut the presumption drawn in favour of the respondent that the cheques in question were issued for existence of legally enforceable debt / liability against the petitioner and accordingly, convicted and sentenced the petitioner for the offence under Section 138 of the Negotiable Instruments Act. The Appellate Court has also dealt with the case properly and rightly confirmed the findings rendered by the trial Court on merits. This Court finds no infirmity or illegality in the said factual concurrent findings rendered by the Courts below.

8. In the result, the Criminal Revision Case stands dismissed being devoid of merits. Consequently, connected Miscellaneous Petitions are closed. The trial Court is directed to secure the 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. It is always open to the parties to file an application before the trial Court under Section 147 of the Negotiable Instruments 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) of this Court, who shall make it form part of the records in this Criminal Revision. Registry is directed

to transmit the original records if any, to the respective Courts forthwith.

Sd/-
Assistant Registrar(CO)MDU

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Sessions Judge,
Namakkal.

2.The Judicial Magistrate,
FTC,Thiruchengode.

Copy to

1. The Assistant Registrar,
Criminal Section,
High Court, Madras.

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

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.16861
+1cc to Mr.V.Suguna, Advocate, S.R.No.16287

Cr1.R.C.No.164 of 2017

MP (CO)
KKV/23/09/2020

सत्यमेव जयते

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