

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.No.422 of 2017

Rajasekar

..Petitioner

Vs

Dhakshnamoorthy

..Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of the Code of Criminal Procedure, to set aside the judgment passed in STC No.5 of 2015 dated 26.06.2015 on the file of the Fast Track Court, Magistrate level at Thiruvallur confirmed in C.A.No.51 of 2015 dated 05.03.2016 on the file of the Principal District and Sessions Judge, Thiruvallur.

For Petitioner : Mr.T.Muruganantham

For Respondent : Mr.C.Mohanraj

ORDER

By judgement dated 26.06.2015 passed by the learned Judicial Magistrate, Fast Track Court Magisterial level at Thiruvallur, in S.T.C.No.5 of 2015, the petitioner was convicted for the offence under Section 138 r/w 142 of the Negotiable Instruments Act, 1881, and sentenced to undergo a simple imprisonment for six months and directed to pay the cheque amount of Rs.3,50,000/- as compensation, in default, to undergo simple imprisonment for one month and on appeal by the petitioner in Crl.A.No.51 of 2015, the learned Principal District and Sessions Judge, Thiruvallur, vide judgment dated 14.12.2016, while confirming the conviction and compensation, modified the sentence from six months to three months simple imprisonment. Aggrieved over the same, the petitioner has filed the present Criminal Revision Case.

2. The allegation against the petitioner/accused is that he borrowed a sum of Rs.3,40,000/- from the respondent/complainant on 28.04.2014 to meet out some urgent business expenses and issued a post-dated cheque bearing No.793182, dated 20.11.2014 drawn on State Bank of India, Thirunindravur Branch. When the cheque was presented for collection, it was returned with an

endorsement "Insufficient funds". It is also alleged that the statutory notice dated 08.12.2014 was served on the petitioner/accused demanding the due and he sent a reply dated 22.12.2014 denying the allegations. Hence, the respondent/complainant has no other option except to file the private complaint, which culminated in S.T.C.No.5 of 2015 before the trial Court.

3.Before the trial Court, the complainant examined himself as P.W.1 and also examined P.Ws.2 and 3 and marked Exs.P.1 to P.8 documents, while the revision petitioner / accused examined himself as D.W.1, besides examining D.Ws.2 and 3 and marking four documents as Exs.D.1 and D.2.

4.Upon detailed appreciation of the oral and documentary evidence adduced by the parties, the Judicial Magistrate No.I, FTC, Thiruvallur, convicted and sentenced the petitioner/accused for the offence, as stated supra. On appeal, the sentence alone was modified by the appellate 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 accused borrowed a sum of Rs.5,00,000/- on 15.03.2013 and issued the subject cheque as security, and the said loan was duly discharged and he never borrowed the amount on 28.04.2014, as alleged by the complainant and there is no legally enforceable liability on his part. Without considering the same in proper perspective, the Trial Court has convicted the accused 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 both sides and perused the materials available on record.

8. The petitioner / accused admitted his signature in the cheque in question even in his reply notice, but the only defence is that the same was issued as a security and therefore, it is his burden to prove that he has not issued the subject cheque towards the discharge of the said loan. Of-course, the accused is entitled to prove the same by preponderance of

probabilities, but he failed to rebut the presumption under Section 139 of the Negotiable Instruments Act. After appreciating the materials and evidence, the trial Court convicted the accused. 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. 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 (CO) MDU

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Fast Track Court, Thiruvallur.
2. The Principal District and Sessions Judge,
Thiruvallur.

Copy To

The Assistant Registrar,
Criminal Side,
High court, Madras.

Cr1.R.C.No.422 of 2017

LN (CO)
KKV/21/07/2020



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