



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2020

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THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

CRL.R.C. (MD) .No.437 of 2014

K.Rajamani

.. Petitioner / Petitioner /
Defacto Complainant

Vs.

1.State through
The Inspector of Police,
District Crime Branch,
Thoothukudi.
(In Crime No.116 of 2016)

... 1st Respondent / Complainant

2.D.Ramprasad Sharma

3.John Amalraj

4.City Union Bank,
Through its Chairman,
149, T.S.R.Periya Theru,
Kumbakonam,
Thanjavur District.

. . . 2nd to 4th Respondents / Accused

PRAYER: This Criminal Revision has been filed under Sectionw397 r/w 401 of Cr.P.C, to call for the records of the order dated 21.07.2014 in Cr.M.P.No.193 of 2012 on the file of the learned Judicial Magistrate, Thiruchendur and set aside the same as illegal.

For Petitioner : Mr.C.Arul Vadivel Alias Sekar

For R1 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)

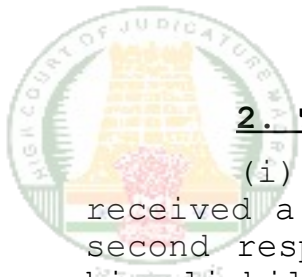
For R2 : Mr.J.Sulthan Bhasha,
Legal Aid Counsel.

For R3 : No Appearance

For R4 : Mr.Muraleedharan

O R D E R

This Criminal Revision Petition has been filed to set aside the order, dated in Cr.M.P.No.193 of 2012, on the file of the learned Judicial Magistrate, Thiruchendur.



2. The facts of the case are briefly stated hereunder:-

(i) The case of the prosecution is that the second respondent received a sum of Rs.65,000/- as hand loan from the petitioner. The second respondent issued cheque to the petitioner for discharge of his liability and the same was returned with an endorsement as 'funds insufficient'. There was an animosity between the petitioner and the third respondent, due to which, the third respondent wantonly refused the cheque.

(ii) Therefore, the petitioner had filed a private complaint against the respondents 2, 3 and 4 for the offence under Section 138 r/w 142 of Negotiable Instruments Act and 465, 467, 420 of IPC. The learned Judicial Magistrate, Tiruchendur in Cr.M.P.No.2354 of 2006, had forwarded the same under Section 156(3) of Cr.P.C to the Inspector of Police, Authoor Police Station and they have registered the case in Crime No.116 of 2006, for the offence under Sections 465, 467 and 420 IPC.

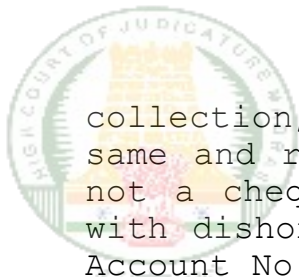
(iii) In the meanwhile, the petitioner had filed a petition in CrI.O.P(MD)No.7063 of 2006 before this Court, seeking transfer of investigation in Crime No.116 of 2006. This Court by order, dated 31.10.2006, directed the Superintendent of Police, Thoothukudi to nominate any police officials other than the Inspector of Police, Arumuganeri Police Station and the Sub-Inspector of Police, Authoor Police Station to take action in accordance with law. Thereafter, the case was transferred to the file of the Inspector of Police, District Crime Branch, Thoothukudi. On completion of investigation, a closure report was filed by the Inspector of Police, District Crime Branch, Thoothukudi on 31.05.2007 closing the case as 'mistake of fact'. Against which, the petitioner filed a protest petition in Cr.M.P.No.193 of 2012, before the learned Judicial Magistrate, Tiruchendur.

(iv) The learned Judicial Magistrate, Tiruchendur by order dated 21.07.2014, had dismissed the protest petition accepting the closure report filed by the first respondent. Against which, the present criminal revision has been filed.

3.Submissions :

The learned counsel appearing on behalf of the petitioner made the following submissions:

(i) that the second respondent had availed a loan of Rs.65,000/- from the petitioner. In discharge of the same, he had given a bearer cheque, dated 16.02.2005. When the said bearer cheque was presented to the City Union Bank's Extension Counter, at Sahupuram, the same was not entertained and returned with the reason that 'withdrawal slip' is not a bearer cheque and to accompany with passbook. The third respondent willfully refused to receive the same and thereafter, the petitioner presented the bearer cheque through the Pazhayakaval Primary Agricultural Co-operative Bank for



collection, then also the third respondent refused to accept the same and returned the same on the ground that 'withdrawal slip' is not a cheque by memo, dated 15.03.2005. This return has been done with dishonest intention, despite there was sufficient funds in the Account No.5224 of the second respondent.

(ii) that subsequently, the petitioner had presented the said cheque once again on 21.05.2005 through RPAD and the same was returned on 30.05.2005 as 'insufficient funds'. Thereby the third respondent had created fraudulent and forged document that entries for the earlier presentation of the cheque and the return of the cheque was not for valid reason, returned for the reason and endorsement/wrongly to be false. Thereby, caused wrongful loss to the petitioner and had committed offence of forgery and cheating.

(iii) that the 4th respondent, being the Chairman of the Bank colluded with the third respondent. There was an animosity between the petitioner and the third respondent, the petitioner had earlier lodged a complaint against the third respondent before the Ombudsman, which is pending. The petitioner was working as General Secretary of DCW Aluvalargal and Thozhilalargal Munnettra Sangam for the past several years. The said Sangam had a bank account in the City Union Bank. The third respondent had prohibited the operation of the Bank account with regard to the same dispute. Hence, there was animosity prevailing between the third respondent and the petitioner. Thus the third respondent had wantonly refused to accept the bearer cheque initially and when it was presented through the bank made an endorsement that to be presented along with passbook. Further, when it was sent through RPAD, by the time the second respondent had withdrawn the entire amount from his account and vanished.

(iv) that there are witnesses, who have clearly spoken about the employment of the second respondent in DCW limited as Security Guard for past 25 years and second respondent availing loan from the petitioner. Further, the second respondent, on 30.06.2003, had taken Voluntary Retirement (VRS), which clearly proved about this employment, taking loan and issuance of bearer cheque to the petitioner. In connivance with the second respondent, the third respondent had returned the cheque. Further, the act of the third respondent would clearly prove that he had committed an offence of forgery. Despite enough and sufficient materials, the first respondent had filed a negative report and the lower Court failed to consider the protest petition, on the materials produced by the petitioner, dismissed the protest petition. Therefore, The lower Court proceeded on a wrong premises 'withdrawal slip' is not a cheque' and it would not come under the Negotiable Instruments Act.

(v) The learned counsel for the petitioner, in support of his contention relied upon the following judgments.



104. (a) Prabhakaran Vs. Natesan reported in 1999-1 L.W. (Crl)

(b) Vishnu Kumar Tiwari Vs. State of Uttar Pradesh reported in (2019) 8 Supreme Court Cases 27, wherein the Honourable Supreme Court has stated as follows:

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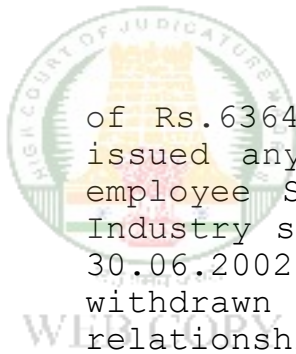
"46. If a protest petition fulfils the requirements of a complaint, the Magistrate may treat the protest petition as a complaint and deal with the same as required under Section 200 read with Section 202 of the Code. In this case, in fact, there is no list of witnesses as such in the protest petition. The prayer in the protest petition is to set aside the final report and to allow the application against the final report. While we are not suggesting that the form must entirely be decisive of the question whether it amounts to a complaint or is liable to be treated as a complaint, we would think that essentially, the protest petition in this case, is summing up of the objections of the second respondent against the final report."

(c) The judgment of this Court in the case of K.M.Ramesh Vs. The Inspector of Police, Rajapalayam North Police Station, Virudhunagar District. The relevant paragraph of the order is extracted hereunder.

"6.A perusal of the order passed by the learned Magistrate would reveal that the learned Magistrate has chosen to accept the final report without looking into the protest petition at all and it is for the Magistrate to examine the complainant and the witnesses on oath and to find out whether there is any substance in the protest petition. But without resorting to the said course, learned Magistrate has accepted the final report and has chosen to reject the protest petition without assigning any reasons. Learned Magistrate ought to have treated the protest petition as a private complaint as contemplated under Section 200 Cr.P.C and to have examined the witnesses before passing the order. That procedure has not been followed by the learned Magistrate and therefore, the order passed by the learned Magistrate, dismissing the protest petition is liable to be set aside."

4.The learned counsel appearing on behalf of the second respondent made the following submissions:

In this case, there is no bearer cheque, it is only the withdrawal slip. The withdrawal slip would not come under the definition of cheque as per the Negotiable Instruments Act. Further, letter dated 06.12.2006 issued by the Assistant Manager, City Union Bank, Sahapuram to the Sub-Inspector of Police, Authoor Police Station would show that as on 11.03.2005, there was only a balance



of Rs.6364/- in Account No.5224 and the second respondent had not issued any cheque in discharge of his liability, and one of the employee Somasundharam/Assistant Manager in Tharangathara Chemical Industry stated that the second respondent had resigned from job on 30.06.2002 and his terminal benefits have been settled, he had withdrawn the same and he gone back and settled in Nepal. He had no relationship with the petitioner after 30.06.2002, and the petitioner had claimed that the second respondent has to pay him to the tune of Rs.65,000/- during the year 2005, and for which, the bearer cheque has been issued is false and the same is not a cheque, it is only a 'withdrawal form' and prayed for dismissal of the revision.

5.Despite notice has been served on the third respondent and his name is also printed in the cause list, there is no representation on behalf of him.

6.The learned counsel appearing on behalf of the fourth respondent made the following submissions:

(i) that the City Union Bank constituted at Kumbakonam, which got various branches, one of their branch is at Sahupuram, where the employees of the Chemical Industry are having their account. The withdrawal slip has been produced by the petitioner, which can be used only by the bearer account without endorsement not by the holder in due course. In this case, the name of the petitioner has been scribed in the withdrawal form without endorsement as per Negotiable Instruments Act.

(ii) On receipt of the statutory notice, a detailed reply has been given on behalf of the 4th respondent on 24.06.2005. Despite the same, he had been falsely implicated in this case. The investigating agency after thorough investigation, found no case against the respondents and had rightly closed the case as 'mistake of fact' and prayed for dismissal of the revision.

7.Considering the rival submissions and on perusal of the materials, it is seen that the petitioner is the Secretary of DCW Aluvalargal and Thozhilalargal Munnettra Sangam and the second respondent is working as a Security Guard. After putting 25 years of service, he sought voluntary retirement and had left from service in the year 2002.

8.The cheque in question in this case has been issued in the year 2005 and the same was refused to be entertained by the third



respondent on the basis of withdrawal slip, since there has been no endorsement to show that the petitioner is holding the withdrawal slip as the holder in due course. Thereafter, the petitioner had presented the cheque through the Pazhayakayal Primary Agricultural Co-operative Bank for collection and the same is returned with an endorsement that the withdrawal slip should be accompanied with a passbook. Thereafter, the petitioner sent the cheque through RPA and the same is returned as 'funds insufficient'. After 2002, the second respondent had settled at Nepal and there is no reason to show that he had issued the withdrawal slip in discharge of his liability. The petitioner's name is scribed in the withdrawal slip, there is nothing to show that endorsement has been made authenticating the petitioner as a holder of the same in due course.

9. Further, the third respondent being a Manager of the City Union Bank had only acted in normal course of his business and no criminality would be attached. It is clearly seen that earlier there was some animosity between the parties and the bank operations have been prohibited, for which, the petitioner had taken action against the third respondent and had sent a complaint. Thus made the petitioner to believe that the 2nd, 3rd and 4th respondents had acted with intention, thereby returning the cheque and committed forgery. The first respondent had after conducting proper investigation, had filed a negative closure report, which the lower Court had rightly confirmed.

10. In the facts and circumstances of the case, this Court finds that there is no merit and reason on the contention of the learned counsel petitioner. Hence, this Criminal Revision Petition is dismissed and the order dated 21.07.2014 in Cr.M.P.No.193 of 2012 on the file of the learned Judicial Magistrate, Thiruchendur is confirmed.

11. Before parting with the case, this Court placed on record an appreciation on the sincere effort made by the legal aid counsel Mr. J. Sulthan Basha, who has appeared for the second respondent, this Court directs the Legal Aid Service Authority to pay his remuneration.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)



To

1.The Judicial Magistrate, Thiruchendur.

2.The Inspector of Police,
District Crime Branch,
Thoothukudi.

3.The Section Officer,
Criminal Secion,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

THE OFFICER INCHARGE,
LEGAL AID SERVICE AUTHORITY,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

CRL.R.C. (MD) .No.437 of 2014
27.01.2020

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