



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2020

CORAM

**THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN.J.**

CRL.RC (MD) No.396 of 2015

K.T.R.Thangarajan

: Petitioner

Vs.

M/s.Saraswathy Ganesan Finance Company Limited,  
Door No.18,  
Chairman A.Shanmugam Road,  
Sivakasi,  
Through its Manager and Authorised Agent,  
A.Venkatesan

: Respondent

PRAYER : Criminal Revision is filed under Section 397 and 401 Cr.P.C, to call for records and set aside the order dated 29.06.2015 passed in the Criminal Appeal in C.A.No.63 of 2008 on the file of the Principal Sessions Judge, Virudhunagar District at Srivilliputhur confirming the order dated 01.04.2008 passed in C.C.No.680 of 2004 on the file of the Judicial Magistrate, Sivakasi and thus allow this Criminal Revision Petition.

For Petitioner : Mr.J.Barathan

For Respondent : Mr.A.Thiruvadikumar

### ORDER

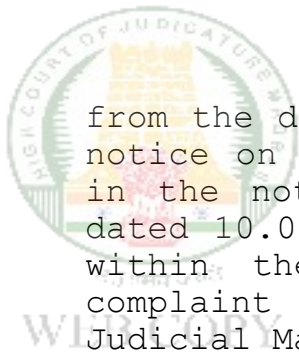
Heard the learned counsel on either side.

2.The revision petitioner/K.T.R.Thangarajan, was prosecuted for the offence under Section 138 of Negotiable Instruments Act, in C.C.No.680 of 2004, on the file of the learned Judicial Magistrate, Sivakasi by the respondent herein.

3.The case of the respondent was that they are a finance company and the wife of the revision petitioner availed a loan of Rs.4 lakhs on 15.12.2001 and also executed relevant documents in that regard. The petitioner has stood as guarantor. He had also executed a deed of guarantee towards repayment of the loan amount. The petitioner herein issued the complaint cheque bearing No.811605, dated 23.06.2004 for a sum of Rs.3,67,736/- drawn on Tamil Nadu Mercantile Bank, Sivakasi Branch, favouring in the respondent herein. The cheque was presented for collection on 23.06.2004. It was dishonored for the reason that the funds in the account maintained by the petitioner was insufficient. The Bank issued the return memo dated 23.06.2004.

4.The respondent herein issued a statutory notice on 28.06.2004 calling upon the petitioner to pay the cheque amount within 15 days

<https://hcservices.ecourts.gov.in/hcservices/>



from the date of receipt of the notice. The petitioner received the notice on 01.07.2004. Instead of complying with the demand set out in the notice, the petitioner is said to have sent reply notice dated 10.07.2004. Therefore, after completing the other formalities within the limitation set out in the statutory, the private complaint under Section 200 Cr.P.C was filed before the learned Judicial Magistrate, Sivakasi.

5.The Manager, Thiru.Venkatesan/respondent herein examined himself as P.W.1. Ex.P.1 to Ex.P.12 were marked. On the side of the accused no evidence was adduced.

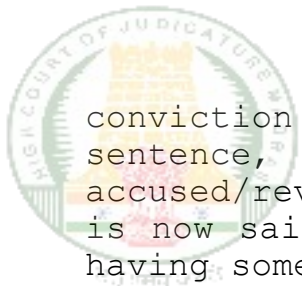
6.The Court below came to the conclusion that the petitioner herein had committed the offence in question and sentenced him to undergo one year Simple Imprisonment. A sum of Rs.5,000/- was also levied as fine. Questioning the same, the petitioner filed C.A.No.63 of 2008 before the learned Principal Sessions Judge, Virudhunagar, Srivilliputhur, vide judgment dated 29.06.2015, the appeal came to be dismissed and the judgment of the trial Magistrate was confirmed. Challenging the same this Criminal Revision came to be filed.

7.During the pendency of the revision case, a joint compromise memo was filed before this Court. The petitioner had agreed to pay a sum of Rs.3 lakhs towards full and final settlement of all the claims of the respondent. The respondent had also agreed to it.

8.It appears that the petitioner had paid a sum of Rs.1,50,000/- towards partial fulfilment of the terms of the compromise. But the balance amount has not been paid. Therefore, I have no other option to take up the revision on merits.

9.I am exercising the revisional jurisdiction under Section 397 r/w 401 Cr.P.C. Unless the revision petitioner shows that the findings of the Court below are perverse, there is no scope for intervention. It is seen that the complainant/respondent herein had filed Ex.P.4/loan agreement. The petitioner had also executed the guarantee deed (Ex.P.5). The complainant has also filed their statement of the accounts (Ex.P.12).

10.From the perusal of above three documents one can safely come to the conclusion that the issuance of the complaint cheque (Ex.P.7) was towards discharge of an enforceable liability. Under Section 139 of Negotiable Instruments Act, the Court below rightly drew presumption in favour of the complainant. It was for the accused to have rebutted the same. The accused had not adduced any rebuttal evidence. Of course, the accused is not obliged to enter the witness box. But then the perusal of the cross examination does not show that the case of the complainant has been shaken in any manner. The Court below has rightly come to the conclusion that the accused had committed the offence under Section 138 Negotiable Instruments Act. Therefore, I have no hesitation to confirm the



conviction imposed on the revision petitioner herein. As regards the sentence, I am of the view that some leniency can be shown. The accused/revision petitioner had also paid a sum of Rs.1,50,000/-. He is now said to have suffered an accident, and therefore, the he is having some difficulty in paying the balance amount.

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11. Taking note of the facts and circumstances, the substantive sentence of one year Simple Imprisonment as well as the fine of Rs.5,000/- imposed on the revision petitioner are set aside. The revision petitioner is directed to pay the balance amount of Rs.1,50,000/- to the respondent/complainant as compensation within a period of three months from the date of receipt of a copy of this order. If the revision petitioner fails to pay the amount of Rs.1,50,000/- within time frame stipulated above, the revision petitioner will have to undergo default sentence of 7 months Simple Imprisonment.

12. With this modification in the matter of sentence, this Criminal Revision Petition is partly allowed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

das

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Principal Sessions Judge, Virudhunagar District,  
Srivilliputhur.

2. The Judicial Magistrate, Sivakasi.

3. The Section Officer, Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 COPIES)

+1 CC to M/s.A. THIRUVADIKUMAR, Advocate ( SR-21071[F] dated 04/11/2020 )

+1 CC to M/s.T.R. JEYAPALAM, Advocate ( SR-21060[F] dated 04/11/2020  
CRL.RC(MD)No.396 of 2015  
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