



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2020

CORAM:

THE HONOURABLE **MR. JUSTICE M. DHANDAPANI**

CRL.R.C. (MD)No.398 of 2015

Raghuraman

... Petitioner/Appellant/Accused

-vs-

1.Sakthivel

... Respondent/1st Respondent/Complainant

2.The State

Through the Public Prosecutor,
Srivilliputhur.

... Respondent/2nd Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the order of conviction and sentence passed by the learned Principal Sessions Judge, Virudhunagar, Srivilliputhur in C.A.No.172 of 2008 dated 24.08.2015.

For Petitioner : Mr.R.Saravanan

For Respondents : Mrs.S.Bharathi

Govt. Advocate (crl.side) (for R2)

No appearance for R1

ORDER

This Criminal Revision Petition is filed by the accused against the concurrent findings of the conviction passed by the Lower Court as well as the Lower Appellate Court.

2.The case of the petitioner is that he is the accused in S.T.C.No.1921 of 2007 on the file of the Judicial Magistrate No.I, Srivilliputhur, for the offence under Sections 138 and 142 of the Negotiable Instruments Act (hereinafter referred to as 'the Act'). The first respondent/complainant has filed a complaint before the Lower Court stating that on 10.06.2007, the accused had borrowed a sum of Rs.75,000/- as hand loan and promised to repay the said amount within two months. But the petitioner/accused did not repay the amount after completion of two months. But he had issued a cheque bearing No.184515 dated 10.08.2007 of State Bank of India, Kovilpatti Branch. The said cheque was presented on 10.08.2007 before the Pandiyan Grama Bank, Krishnankovil Branch, which instrument was returned with endorsement stating that "**Accounts Closed**". Thereafter, the first respondent/complainant has sent a legal notice on 11.09.2007 demanding the cheque amount within 15 days and the petitioner/accused has received the legal notice on 18.09.2007. However, the petitioner/ accused neither sent any reply notice nor paid the cheque amount. Therefore, the said complaint was filed before the trial Court.



3. On behalf of the first respondent/complainant, he himself has examined as P.W.1 and marked Exs.P.1 to P.5. On behalf of the petitioner/accused, no witnesses were examined and no documents were marked. After hearing the rival submissions, the trial Court has found the petitioner/accused guilty for the offence under Section 138 of the Act and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.3,000/- in default to undergo simple imprisonment for three months.

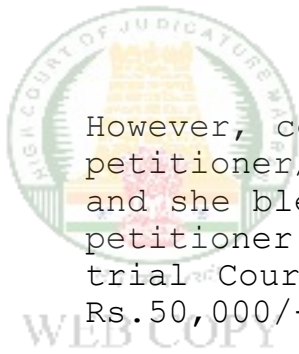
4. Assailing the said order, the petitioner/accused has preferred an appeal before the Lower Appellate Court. The Lower Appellate Court has confirmed the conviction and dismissed the appeal. Against the said findings, the present Criminal Revision Petition is filed.

5. The learned counsel appearing for the petitioner/accused would submit that law is well settled that the revision petition is maintainable only if the order of trial Court is perverse. He would further submit that the petitioner/accused married a handicapped woman and she blessed with one girl child, who aged about 1½ years and there is no legally enforceable liability and no correspondence with regard to the loan borrowed by the petitioner. He would further submit that the petitioner has already deposited Rs.25,000/- before the trial Court and now he is ready to deposit the balance amount of Rs.50,000/-. Hence, he prayed this Court to modify the sentences imposed by the trial Court.

6. When the matter is called for hearing today, there is no representation on behalf of the first respondent.

7. Perusal of the records would show that admittedly, the cheque was issued on 10.08.2007 by the petitioner/accused for legally enforceable liability and the said cheque was presented before the Pandian Grama Bank, Krishnankovil Branch and the same was returned with an endorsement that "**Accounts closed**" and other legal formalities were completed and the petitioner/accused did not raise any point on the technical aspects for issuing and presenting the cheque or denying the legal notice and the limitation prescribed under the Act was fully complied with.

8. The only point arises for consideration is that whether there is any legally enforceable liability or not. As that point also elaborately discussed by the trial Court as well as lower appellate Court, this Court is unable to take a contra view against the view taken by the trial Court as well as the lower appellate Court. The revision is maintainable only if the error on the face of records and correctness of the legality. In the absence of perversity, I am not inclined to interfere with the concurrent findings of the trial Court as well as the lower appellate Court.



However, considering the submissions of the learned counsel for the petitioner/accused that the petitioner married a handicapped woman and she blessed with one girl child, who aged about 1½ years and the petitioner has already deposited Rs.25,000/- before the trial Court and now he is ready to deposit the balance amount of Rs.50,000/-.

9. In view of the above, the Criminal Revision Petition is dismissed, however, the sentence alone is modified to the effect that the petitioner is directed to deposit a sum of Rs.65,000/- (Rupees Sixty Five Thousand Only), as penalty, failing which, the conviction imposed on the petitioner by the trial Court, which was confirmed by the lower appellate Court, sentencing the petitioner to undergo 1 year Simple Imprisonment, with a fine of Rs.3000/- in default, to undergo 3 months Simple Imprisonment, is restored. Further, the trial Court shall take steps to secure the accused to undergo the remaining period of sentence, if he failed to deposit the penalty amount. On such deposit is being made, the respondent/complainant is permitted to withdraw the deposited amount, by filing appropriate application.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Principal Sessions Judge, Virudhunagar, Srivilliputhur.

2.The Judicial Magistrate No.I, Srivilliputhur.

3. The Chief Judicial Magistrate,
Virudhunagar at Srivilliputhur.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.R.SARAVANAN, Advocate (SR-10876[F] dated 10/03/2020)

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VB(08.05.2020) 3P 6C