



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.01.2020
CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.510 of 2015
and
MP(MD)No.2 of 2015

K.S.Shanmugam : Revision Petitioner/Appellant/Accused

Vs.

S.Kanagaraj : Respondent/Respondent/Complainant

Prayer: Criminal Revision has been filed under Section 397 and 401 of Criminal Procedure Code, against the judgment made in Crl.A.No.30 of 2012 on the file of Principal Sessions Judge, Karur, dated 22.09.2015, modifying the judgment made in C.C.No.277 of 2006 on the file of the Judicial Magistrate No.II, Karur, dated 10.11.2011.

For Revision Petitioner : Mr.S.Gokul Raj
For Respondent : No appearance

J U D G M E N T

This criminal revision is directed against the judgment passed in Crl.A.No.30 of 2012 by the Principal Sessions Judge, Karur, dated 22.09.2015 modifying the judgment passed in C.C.No.277 of 2006 by the Judicial Magistrate No.II, Karur, dated 10.11.2011.

2.The factual matrix of the case leading to filing of the present revision petition are as under:-

The accused borrowed a sum of Rs.1,50,000/- from the complainant and executed a promissory note in his favour promising to repay the principal with interest at the rate of 1.50 per Rs.100/- per month and thereafter, in-spite of several demands made by the complainant, the accused did not repay any amount and subsequently, on 10.01.2006, he issued a post dated cheque, dated 24.01.2006 drawn on Indian Overseas Bank, Karur Branch for a sum of Rs.1,50,000/- in partial discharge of the loan. When the complainant presented the cheque on 27.01.2006 through his banker namely Canara Bank, Karur, the same was returned unpaid for the reason "Payment Stopped by the Drawer". Thereafter the complainant issued notice on 22.02.2006. However, the accused neither sent any reply nor chosen to pay the cheque amount. Hence, a complaint under Section 138 of the Negotiable Instruments Act (in short "The Act") was filed.



3.The accused was summoned. Notice under Section 251 Cr.P.C was served upon the accused to which he pleaded not guilty and claimed trial. After completing trial, vide order, dated 10.11.2011, learned Judicial Magistrate No.II, Karur, convicted the accused and sentenced him to undergo six months simple imprisonment and imposed a fine of Rs.5,000/-, in default to undergo three months simple Imprisonment. Feeling aggrieved by the order, appeal was preferred before the Principal Sessions Judge, Karur. The first appellate court had also confirmed the findings of the trial court and further, modified the judgment of the trial court holding that the accused is directed to pay a fine of Rs.1,52,000/- and in default, to pay the fine amount to undergo simple imprisonment for a period of six months. Aggrieved over the same, the present criminal revision has been filed.

4.Heard the learned counsel appearing for the petitioner and perused the materials available on record. In-spite of giving opportunity to the respondent to argue the case, there was no representation on the side of the respondent.

5.The main contention raised on the side of the petitioner/accused is that he did not know the complainant and the cheque alleged to be given by the petitioner/accused to the respondent/complainant is false and the petitioner had issued 5 unfilled blank cheques to one Parameswaran of Vellalapatti Village and that has been misused by the respondent and he filed a private complaint and the cheques alleged are not issued for legally enforceable debt and the condition to pay a sum of Rs.1,52,000/- as fine is not correct and there is no application filed by the respondent under section 357(3) of the Code of the Criminal Procedure and hence, the first appellate court order to pay Rs.1,50,000/- as compensation is illegal and once, the court came to the conclusion that the alleged transaction is monetary transaction, that court ought not to have convicted the petitioner and directed to pay the compensation and fine simultaneously and prays that the criminal revision has to be allowed.

6.In this case, the accused has not denied his signature in the alleged cheque. His contention is that he issued five unfilled blank cheques to one Parameswaran of Vellapatti village and one of the cheques was filed by this complainant and the case was falsely foisted against the petitioner. But the above contention was denied by the complainant. The accused failed to prove the nexus between the complainant and the Parameswaran. Hence, it is held that the petitioner failed to prove the nexus between the complainant and Parameswaran. Hence, the argument put forth on the side of the petitioner/accused stating that he gave five unfilled cheques to one Parameswaran and one of the cheques was used by the complainant and the complainant filed this false case against the petitioner is not



7.In this case, the petitioner/accused has not denied his signature in the cheque. Unless and until, the contrary is proved, it is presumed that the accused gave the disputed cheque to the complainant. On perusal of the order of the first appellate court, it came to the conclusion that the petitioner/accused is found guilty under section 138 of the Negotiable Instruments Act. Hence, it is held that it is not necessary to interfere in the findings of the courts below in respect of punishment imposed on the petitioner. On perusal of the judgment passed by the first appellate court, it imposed Rs.2,000/- as confiscation to the Government. No sufficient reason was assigned for imposing Rs.2,000/- towards confiscation. Hence the confiscation imposed was set aside. On perusal of the order passed by the first appellate court, it imposed compensation and fine simultaneously. Hence, it is modified that the revision petitioner/accused is directed to pay Rs.1,50,000/- as compensation to the complainant.

8.The learned counsel appearing for the petitioner submitted that the petitioner has deposited Rs.40,000/- in the court below. Hence, it is held that the petitioner/accused is directed to pay the balance amount of Rs.1,10,000/- to the complainant within a period of four weeks from the date of receipt of a copy of this order.

9.In the result, this criminal revision is **partly allowed**. The fine amount imposed by the first appellate court alone is set aside. The petitioner/accused is directed to pay Rs.1,50,000/- to the respondent/complainant towards compensation. Since, the petitioner has already deposited Rs.40,000/-, before the lower court. he is directed to pay the balance amount of **Rs.1,10,000/- (One Lakh and Ten thousand only)** to the complainant, within a period of three weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate No.II, Karur.

2.The Principal Sessions Judge, Karur.

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+1 CC to Mr.S.GOKUL RAJ, Advocate (SR-4289[F] dated 31/01/2020)

Judgment made in
Crl.R.C(MD)No.510 of 2015
31.01.2020

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