



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Crl.R.C.(MD)No.183 of 2016

and

Crl.M.P.(MD)Nos.2619 and 2620 of 2016

WEB COPY

Saravanan

... Revision Petitioner/Accused

versus

P.Revathi

... Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C. against the Judgment dated 26.08.2015 made in Crl.A.No.8 of 2014 on the file of the learned Principal Sessions Judge, Karur.

For Revision Petitioner	:	Mr.P.Sarvanakumar
For Respondent	:	Mr.R.Suresh
		for Mr.E.K.Kumaresan

ORDER

This Criminal Revision Case is filed as against the Judgment dated 26.08.2015 made in Crl.A.No.8 of 2014 on the file of the learned Principal Sessions Judge, Karur.

2. The revision petitioner herein is the accused in C.C.No.74 of 2012 on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur and he was tried for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. The brief facts of the case reads as under:

(i) On 10.07.2012, the accused borrowed a sum of Rs.2,00,000/- from the defacto complainant to meet out his business and family expenses in the presence of one P.Ramasamy, S/o.Palaniyappan and in order to discharge the said loan, the accused issued a post-dated cheque (Ex.P1) on the same day. When the defacto complainant represented the said cheque, it was returned as "insufficient funds". Thereafter, the defacto complainant issued a statutory notice to the accused. Even after the receipt of the said notice, the accused neither gave any reply to the said notice nor repaid the amount. Therefore, a complaint has been lodged before the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur, for the offence under Section 138 of the Negotiable Instruments Act.

(ii) Before the trial Court, the defacto complainant examined herself as P.W.1 and one Ramasamy was examined as P.W.2 and 5 documents were marked as Ex.P1 to Ex.P5. On the side of the accused, one Gurul Kannan was examined as D.W.1 and one document was

marked as Ex.D1.

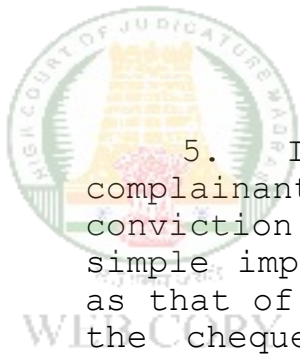
(iii) After considering the oral and documentary evidence, the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur, found the accused guilty and convicted and sentenced to undergo two months simple imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo 30 days simple imprisonment.

(iv) Aggrieved over the same, the accused filed Criminal Appeal in C.A.No.8 of 2014 before the learned Principal Sessions Judge, Karur. The Appellate Court, vide Judgment dated 26.08.2015, modified the sentence and directed the accused to pay a fine of Rs.2,02,000/- and in default to pay the fine amount, to undergo simple imprisonment for a period of six months. Further, a sum of Rs.2,00,000/- was ordered to be paid to the respondent/complainant as compensation under Section 357(3) Cr.P.C. and the balance amount was ordered to be confiscated by the Government.

(v) Challenging the concurrent findings of the trial Court and the Appellate Court, the accused has preferred this Criminal Revision Case.

3. Mr.P.Saravana Kumar, learned counsel for the revision petitioner submitted that the revision petitioner was having money transaction with one Kumarasamy, maternal uncle of the complainant and he gave a blank cheque to the said Kumarasamy and that cheque has been misused by this complainant. According to the petitioner, there was no money transaction between him and the complainant. The learned counsel for the revision petitioner has also pointed out a contradiction from the averments in the complaint that as per the complaint, the cheque was given on the same day of borrowing the money, whereas in his deposition, the complainant has stated that the cheque was given by the petitioner/accused after four days from the date of his borrowing. However, without considering the same, the Appellate Court has erred in confirming the conviction with a sentence to pay the fine amount of Rs.2,02,000/- the cheque amount to the complainant, which is erroneous and unsustainable in law.

4. Per contra, Mr.R.Suresh, learned counsel for the complainant/respondent submitted that though it is claimed by the accused that the cheque was given to one Kumarasamy, there is no material placed on the side of the accused/revision petitioner to rebut the presumption raised by the complainant as contemplated under Section 139 of the Negotiable Instruments Act. For the statutory notice issued by the complainant, the revision petitioner/accused has not preferred any reply and his signature in the cheque Ex.P1 has not been denied by the accused/revision petitioner. The complainant has established his case beyond any reasonable doubt and therefore, the Courts below have concurrently found against the revision petitioner and there is no reason to



5. It is further submitted by the learned counsel for the complainant/respondent that though the trial Court imposed conviction on the accused and sentenced him to undergo two months simple imprisonment, the appellate Court has modified the sentence as that of the cheque amount as fine amount and sentenced him to pay the cheque amount alone with a default clause. The revision petitioner, after obtaining the order of suspension of sentence, evaded to pay the cheque amount as directed by the appellate Court and there was no outer time limit prescribed by the Appellate Court. Therefore, no interference is required.

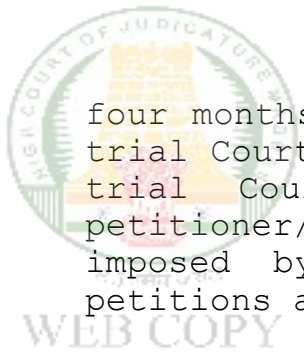
6. This Court paid its anxious consideration to the rival submissions made and also perused the available records.

7. The scope of the revision case is very very limited. This contradiction pointed out by the learned counsel for the revision petitioner cannot be considered when the petitioner has not disputed the cheque Ex.P1. The revision petitioner has claimed that the cheque was given to one Kumarasamy, the maternal uncle of the complainant, but he has not substantiated the same by any oral or documentary evidence. The petitioner has received the statutory notice issued by the complainant, but not opted to give any reply. The instrument Ex.P1 has not been denied and in the absence of any material to substantiate that this cheque Ex.P1 was given only to another person, the presumption is against the petitioner and therefore, this Criminal Revision Case deserves to be dismissed.

8. As rightly pointed out by the counsels for the revision petitioner and the respondent, the Appellate Court while modifying the sentence has not fixed any outer time limit for payment of the fine amount as compensation to the complainant. The learned counsel for the revision petitioner/accused seeks some time to pay the cheque amount.

9. It is seen from the records that the revision petitioner filed this revision petition along with a petition to suspend the sentence and he got an order of suspension of order. The Appellate Court has ordered to pay a fine amount and also directed to pay the compensation amount. Though the petitioner was granted a relief of suspension of sentence for the payment of fine amount, there is no interim order pending this revision in so far as the order of compensation is concerned. The petitioner neither obtained an order to stay the payment of compensation amount nor taken any efforts to pay the compensation amount as directed by the Court.

10. Accordingly, the Criminal Revision Case is dismissed and the sentence imposed by the Appellate Court is hereby confirmed. The Registry is directed to return the original records to the trial Court. The petitioner is permitted to pay the cheque amount and the compensation ordered by the appellate Court within a period of



four months from the date of receipt of a copy of this order. The trial Court is directed to ensure the orders are complied with. The trial Court shall issue a warrant to secure the revision petitioner/accused to undergo six months simple imprisonment as imposed by the Appellate Court. The connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CSIII)

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Sub Assistant Registrar(CS)

To

1. The Principal Sessions Judge,
Karur.
2. The Judicial Magistrate,
Fast Track Court at Magisterial Level,
Karur
3. The Chief Judicial Magistrate, Karur.

Copy to

The Section Officer, (2C)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai

Crl.R.C. (MD) No.183 of 2016
24.08.2020

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KB(19.04.2021) 4P 6C