BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C(MD)No.274 of 2016

Rajan ... Petitioner/Accused

Vs

Devadasan ... Respondent/Complainant

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records from the lower Courts and set aside the Judgment of the Appellate Court passed by the learned IV Additional District and Sessions Judge, Tirunelveli in C.A.No.73 of 2014, dated 31.03.2016 confirming the Judgment of the learned District Munsif cum Judicial Magistrate Court, Nanguneri, Tirunelvei in C.C.No.105 of 2012, dated 10.09.2014 by allowing this revision.

For Petitioner : Mr.G.Karuppasamy Pandian
For Respondent : Mr.J.Ashok

ORDER

Heard the learned counsel on either side.

2.The respondent Devadasan filed C.C.No.105 of 2012 before the learned Judicial Magistrate, Nanguneri against the petitioner herein for the offence under Section 138 of the Negotiable Instruments Act. The case ended in conviction and sentence vide Judgment dated 10.09.2014. Aggrieved by the same, the petitioner filed Criminal Appeal No.73 of 2014 before the IV Additional District and Sessions Judge, Tirunelvlei. By Judgment dated 31.03.2016, the Appellate Court confirmed the conviction as well as the sentence and dismissed the appeal. The Courts below have thus sentenced the petitioner to three months simple imprisonment and also directed him to pay the cheque amount of Rs.1,38,000/- to the complainant as compensation. Default sentence was also imposed in the event of failure to pay the compensation amount. Challenging the same, this Criminal Revision Petition came to be filed.

3.The learned counsel appearing for the petitioner contended that there was a sale transaction between the parties and the cheque amount in question was given as security and that, almost two years after transaction, it was fraudulently presented by the complainant.

The learned counsel for the petitioner pointed out that the transaction between the parties was admittedly in the year 2010 and that the stand of the complainant that the complaint cheque came to be given on 10.01.2012 is on the face of it unbelievable.

4.I am not persuaded by the aforesaid contentions of the learned counsel appearing for the petitioner.

5. As rightly pointed pout by the learned counsel appearing for the complainant/ respondent, the complaint itself clearly states that there was a prior sale transaction between the parties and that is how, the accused became known to the complainant. It is seen that the accused had sold some five acres of land to the complainant and the same was also registered on 24.09.2010. The specific stand of the complainant is that the accused had agreed to sell sixteen acres of his land at the rate of Rs.70,000/- per acre. This appears to be a oral sale agreement between the parties. The complainant is said to have given a sum of Rs.1,38,000/- as advance. The complainant alleges that the accused did not come forward to conclude the said transaction. When the complainant asked for return of the said amount, the accused had initially evaded the same and finally on 10.11.2012 gave the complaint cheque. The accused did not enter the witness box. Of-course, the accused is not obliged to enter the witness box and he can establish his defence by cross examination of the prosecution/complainant witnesses. In this case, the complainant had examined himself as P.W.1 and also marked Ex.P1 to EX.7.

6.I went through the testimony of the complainant and it is seen that the complainant had stuck to his ground and his testimony could not be shaken. The accused has not denied his signature attributed to him in the complaint cheque. His case is that it was given as security. This theory of security does not carry any credibility. Admittedly, the sale transaction in respect of five acres was already concluded on 24.09.2010. The accused in this case happens to be the vendor. There is no question of vendor giving his cheque as security. Therefore, I hold that the case of the complainant is more credible. Except marking the power of attorney and the sale deed, no other evidence had been adduced by the accused.

7.As rightly pointed out by the learned counsel for the respondent, both the Courts below namely the learned trial Magistrate as well as the learned Sessions Judge have concurrently found that the accused is guilty of the offence under Section 138 of the Negotiable Instruments Act. Exercising my revisional jurisdiction, I am not persuaded to hold that the said finding suffers from material irregularity or perversity. The accused had claimed that there is a civil case pending between the parties. But no document pertaining to the civil case has been marked in evidence. In fact, the stand taken by the accused in the course of trial is that the complainant, after taking the sale deed from him, had cheated him by not paying the balance sale consideration. If that be so, the accused would have definitely made a claim for the payment of the balance amount from the complainant. As already pointed out, the stand of the accused is that he had filed a suit for cancelling the sale deed /Ex.D1. But even a copy of the plaint or the court diary extract in respect of the so called civil case, have not been marked.

8.Since the complainant had come out with certain *prima facie* averments and also the signature in Ex.P1/complaint cheque, has been admitted, presumption under Section 139 of the Negotiable Instruments Act was rightly raised against the accused. It was clearly for the accused to have rebutted the said presumption. The Courts below have concurrently found that the said presumption has not been rebutted. I am in agreement with the said finding. Therefore, I confirm the finding of the conviction imposed on the revision petitioner. But then, taking note of the lapse of time and the age of the petitioner, I am of the view that some modification in the matter of sentence is necessary. Therefore, the sentence imposed on the petitioner is modified as follows:-

(I)The petitioner is directed to deposit the cheque amount of Rs.1,38,000/- to the credit of C.C.No.105 of 2012 on the file of the Judicial Magistrate, Nanguneri, within a period of eight weeks from the date of receipt of a copy of this order.

(II)It is open to the complainant to withdraw the cheque amount without notice to the petitioner.

(III)If the petitioner fails to deposit the said cheque amount, the sentence imposed on the petitioner by the Courts below will stand automatically restored.

9.With this modification, this Criminal Revision Petition is partly allowed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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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 District Munsif cum Judicial Magistrate Court,
  Nanguneri, Tirunelvei.

2.The IV Additional District and Sessions Judge,
  Tirunelveli.

+1 CC to Mr.J.ASHOK, Advocate (SR-23576[F] dated 02/12/2020)

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SJ(CO)
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