



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.R.C.(MD)No.353 of 2016

K.Selvaraj

... Petitioner

Vs.

1. G.Venkatachalam

2. The State rep. by
The Public Prosecutor,
Dindigul.

... Respondents

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C, to call for the records relating to the judgment by the Additional Sessions Judge, Dindigul in C.A.No.12 of 2012 dated 06.03.2016 confirming the judgment passed by the Judicial Magistrate, Fast Track Court, Palani, in C.C.No.194 of 2011 dated 12.01.2012 and set aside the same by allowing the present criminal revision petition.

For Petitioner : Mr.C.T.Perumal

For Respondents : Mr.S.Karthik for R1

O R D E R

Heard the learned counsel on either side.

2.G.Venkatachalam is the respondent. He filed C.C.No.194 of 2011 on the file of Judicial Magistrate, Fast Track Court, Palani, against the revision petitioner for the offence under Section 138 of Negotiable Instrument Act.

3.The complainant examined himself as P.W.1 and marked Exs.P1 to P5. On the said of the accused no evidence was adduced.

4.The learned Trial Magistrate vide judgment dated 12.01.2012 found the accused guilty of the offence and sentenced him to three months simple imprisonment and also directed him to pay the cheque amount of Rs.1,00,000/- and default sentence was also imposed.



Aggrieved by the same, the accused filed C.A.No.12 of 2012 before the Additional District and Sessions Court, Dindigul. The accused pleaded before the Appellate Court that during the relevant time his mother was seriously bedridden and that she eventually passed away on 01.02.2012. It was for that reason that the accused could not arrange to adduce proper defence evidence. Therefore, he wanted to be given one more opportunity to adduce defence evidence. But the Appellate Court vide judgment dated 08.03.2016 declined the said request made by the accused and dismissed the appeal and confirmed the conviction and sentence of the Trial Magistrate. Challenging the same, this criminal revision case came to be filed.

5.The learned counsel for the revision petitioner reiterated all the contentions set out in the memorandum of grounds. He would claim that he had transaction only with one Paulsamy and he had no dealing or transaction with the complainant herein.

6.But I am afraid in revisional jurisdiction these contentions cannot be considered. The fact remains that the accused received Ex.P3/legal notice. The complaint cheque is dated 13.02.2006. It was presented for collection on 11.07.2006. It was returned for the reason of "insufficiency of fund" in the account maintained by the accused. Notice was sent on 17.07.2006 and on 18.07.2006 it was received by the accused. Ex.P4 is the acknowledgement card. The accused after receiving the notice chose to remain silent. He did not even bother to respond. Therefore, the medical condition of the mother of the accused cannot in any way advance his case. If the accused had responded immediately to the legal notice, then probably this Court would have considered the aforesaid contention of the learned counsel for the revision petitioner with some indulgence. The fact that the accused did not respond to the statutory notice and the fact that he did not adduce any evidence during trial, had led the Courts below to come to the conclusion that the version projected by the accused cannot be believed. I find no ground to take a different view. The findings of the Courts below are not vitiated by any material irregularity or perversity. Therefore, the conviction imposed on the revision petitioner is confirmed. However, taking note of the age of the accused, I am of the view that some modification in the matter of sentence is called for. The accused is directed to remit the cheque amount of Rs.2,00,000/- to the credit of C.C.No.194 of 2011 on the file of the learned Judicial Magistrate, Fast Track Court, Palani, within a period of twelve weeks from the date of receipt of a copy of this order. It is open to the complainant to withdraw the same without notice to the accused. If the accused adheres to the aforesaid direction, the sentence imposed on him will not be enforced. If the accused fails to adhere to this direction, the sentence imposed on him by the Courts below will be enforced. I make it clear that the outcome of this criminal revision case will not have any bearing on the rights of the revision petitioner as pensioner. This will not operate as a

<https://hccrcs.courts.gov.in/hccrcs/> in any manner.



7. With these observations and protecting the rights of the accused, this criminal revision case is partly allowed.

Sd/-

Assistant Registrar (CS-III)

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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 Additional District & Sessions Judge,
Palani.
2. The Judicial Magistrate,
Fast Track Court, Palani.

+1 CC to Mr.C.T.PERUMAL, Advocate (SR-23763[F] dated 03/12/2020)
+1 CC to Mr.S.KARTHIK, Advocate (SR-23782[F] dated 03/12/2020)

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SJ(CO)

CS(21.12.2020) 3P 5C