



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.R.C.(MD)No.367 of 2016 and

CRL.M.P.(MD)No.4552 of 2016

WEB COPY

M.Baskar

.. Petitioner/Appellant/
Sole Accused

Vs.

S.Periasamy

.. Respondent/Respondent/
Complainant

Prayer : This Criminal Revision petition is filed under Sections 397 and 401 of Cr.P.C., to set aside the order passed in C.A.No.57 of 2014 dated 20.11.2015 on the file of the learned Principal Sessions Judge, Karur, by modifying the sentence passed by the learned Judicial Magistrate/Fast Track Court at Magisterial Level, Karur, in C.C.No.364 of 2013 dated 14.11.2014 and acquit the petitioner.

For Petitioner : Mr.R.Mathiyalagan

For Respondent : Mr.P.Dhanasekaran

ORDER

Heard the learned counsel on either side.

2. The revision petitioner Baskar was prosecuted for the offences under Sections 138 r/w. 142 of the Negotiable Instruments Act in C.C.No.364 of 2013 on the file of the Judicial Magistrate/Fast Track Court at Magisterial Level, Karur.

3. The case of the complainant is that the accused borrowed a sum of Rs.2,00,000/- from him on 08.01.2012 and towards repayment of the said amount, he issued complaint cheque Ex.P.2. The said cheque was dishonoured on being presented for collection. Therefore, the complainant issued Ex.P.4 legal notice on 05.07.2013. Ex.P.5 is the acknowledgement card. Since the revision petitioner did not comply with the demand set out in the said notice, the complainant lodged a private complaint. The complainant examined himself as P.W.1. He also examined one Sadhasivam who is the scribe and attesting witness of the promissory note as P.W.2. Promissory note was marked as Ex.P.1.

4. The learned trial Magistrate considered the defence of the accused that he had transaction only with Sri Amarnath Finance and not with the complainant. The learned trial Magistrate has given a finding that the accused had not marked any document showing that he had sale transaction with Sri Amarnath Finance. It has been further noted that the accused did not deny the signature attributed to him



in Ex.P.1 Promissory Note and Ex.P.2 complaint cheque. The categorical finding of the Court below is that the presumption raised against the accused under Section 139 of the Negotiable Instruments Act has not been rebutted by the accused.

5. The finding of guilt rendered by the learned trial Magistrate has been duly confirmed by the lower appellate Court also. Nothing has been brought out to show that these findings are vitiated by any perversity or material irregularity. The appellate Court has however modified the sentence imposed on the accused as follows:-

"a) The appellant/accused is directed 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 four months.

b) A sum of Rs.2,00,000/- is ordered to be paid to the respondent/complainant under Section 357 (3) of Cr.P.C. and the balance amount is ordered to be confiscated to the Government."

6. I am of the view that the time given by the lower appellate Court can be extended. In this view of the matter even while confirming the conviction imposed on the revision petitioner, the time given by the lower appellate Court is modified as follows:-

i) The revision petitioner is directed to deposit the cheque amount of Rs.2,00,000/- (Rupees Two Lakhs only) to the credit of C.C.No.364 of 2013 on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level, Karur, within a period of eight weeks from the date of receipt of a copy of this order.

ii) The complainant can withdraw the said amount without notice to the accused. If the accused fails to deposit the cheque amount within the time stipulated above, the sentence imposed on the revision petitioner by the Courts below will be automatically restored.

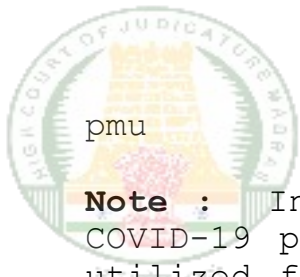
iii) I make it clear that filing of petition for further extension of time will not at all arise.

7. With this modification, this criminal revision stands partly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl Side)

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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 Principal Sessions Judge,
Karur.
2. The Judicial Magistrate/
Fast Track Court at Magisterial Level, Karur.
3. The Section Officer,
Criminal Section, (Records)
Madurai Bench of Madras High Court, Madurai. (2c)

Crl. R.C. (MD) No. 367 of 2016
30.11.2020

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