



Revision Petitioner/Accused namely P.Shanmugam, S/o.Ponnusamy, was directed to be released on bail in and by the order of this court dated 12.08.2016 made in CrI.MP(MD) No.6898 of 2016 in CrI. RC (MD)No.545 of 2016.

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
Cr1.R.C. (MD) No.545 of 2016

 $V_S.$

K.R.Ganesan ... Respondent/Respondent/Complainant

For Petitioner : Mr.S.Gokul Raj

For Respondent : Mr.B.Janarth Kumar

O R D E R

Heard the learned counsel on either side.

2.The respondent, Thiru.K.R.Ganesan, filed C.C.No.370 of 2013 on the file of the Fast Track Court at Magistrate Level, Karur against the petitioner herein for the offence under Section 138 of Negotiable Instruments Act. The learned trial Magistrate vide judgment dated 19.11.2015 found the petitioner guilty of the said offence and sentenced him to undergo 2 months simple imprisonment and also to pay a fine of Rs.1,500/-, default sentence was also imposed. Questioning the same, the accused filed Crl.A.No.92 of 2015 before the Principal Sessions Judge, Mahalir Court, Karur. The appeal was partly allowed and the sentence of two months simple imprisonment was modified and one month simple imprisonment was imposed. Challenging the same, this revision petition came to be filed.



3.The learned counsel for the petitioner reiterated the all the contentions set out in the memorandum of the grounds and wanted to this Court to reverse the impugned judgments.

4.Per contra, the learned counsel for the complainant submitted that no interference is called for, particularly while exercising the revisional jurisdiction.

5.I carefully considered the rival contentions and also went through the materials on record. It is seen that the case of the complainant is that on 13.11.2009, the accused borrowed a sum of Rs.1,50,000/- for interest from the complainant. Towards discharge of his liability, he had issued Ex.P.2/cheque for a sum of Rs.1,50,000/-. The complaint cheque was presented for collection on 30.08.2012. The cheque was returned with an endorsement 'account closed'. Thereupon the complainant issued Ex.P.4/legal notice on 04.09.2012. Though the legal notice was served on the accused, he did not choose to issue any reply. The complainant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.5.

6.The signature found in Ex.P.2/cheque is not in dispute. It is also seen that the complainant had marked Ex.P.1/promissory note. Thus the complainant had *prima facie* established his case. Therefore, the presumption under Section 139 of Negotiable Instruments Act will automatically come into force in favour of the complainant. Though the accused examined himself as D.W.1 and Chellaperumal/D.W.2, I have to necessarily concur with the findings of the Courts below that he had not established his defence. The case of the defence is that he borrowed only a sum of Rs.30,000/- from the complainant. If that be so, the accused would have definitely given proper reply controverting the stand of the complainant. In this case, vide Ex.P.5, reply from the jurisdictional post master states that the legal notice has been served. The non-issuance of reply, is a factor that goes against the accused. Except his oral testimony that he borrowed only a sum of Rs.30,000/-, there is absolutely nothing else to substantiate his defence. As already pointed out, the complainant had also marked Ex.P.1/the original promissory note, dated 13.11.2009 for Rs.1,50,000/- before the Court below. The trial Court came to the conclusion that the complainant had established the liability on the part of the accused beyond reasonable doubt. It has not been shown that the findings of the Courts below are vitiated by any material irregularity or perversity.

7.In this view of the matter, the conviction imposed on the revision petitioner/accused is confirmed. However, I am of the view that some modification in the matter of sentence is necessary, taking note of the other circumstances pointed out by the learned counsel for the petitioner. It appears that when suspension of sentence was granted condition was imposed on the petitioner. If the



petitioner had deposited any amount in terms of the said condition, the petitioner needs to deposit only the balance amount, notwithstanding the direction in clause (1)

(i) The revision petitioner is directed to deposit the cheque amount of Rs.1,50,000/- (Rupees One Lakhs Fifty Thousand Only) to the credit of C.C.No.370 of 2013 on the file of learned Fast Track Court at Magistrate Level, Karur, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) On such deposit, it is open to the complainant to withdraw the said amount without notice to the accused.

(iii) If the revision petitioner fails to deposit the cheque amount within the period stipulated above, the sentence imposed as modified by the Sessions Court will be restored automatically. If the petitioner makes the said deposit, the sentence imposed on the petitioner will not be enforced against him.

7. With this modification in the matter of sentence, this criminal revision case is partly allowed.

Sd/-

Assistant Registrar (crl side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

das

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 Fast Track Court at Magistrate Level, Karur.
3. The Chief Judicial Magistrate, Karur.
4. The Section Officer, (2 copies)
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S. GOKULRAJ, Advocate (SR-23581[F] dated 02/12/2020)

Crl.R.C.(MD)No.545 of 2016
01.12.2020

VB (28.12.2020) 3P 7C

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