



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.08.2020

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.R.C (MD)No.61 of 2016

R.Palanisamy

... Petitioner/Accused

Vs

V.M.Periyasamy

... Respondent/Complainant

PRAYER: Criminal Revision Case, filed under Section 397 and 401 of the Criminal Procedure Code, to call for the records in Judgment in C.A.No.31 of 2013 on the file of the Principal and District and Sessions Judge, Karur, dated 12.09.2015 modifying the order of conviction passed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur in S.T.C.No.115 of 2011 dated 23.09.2013 and set aside the same.

For Petitioner	:	Ms.Tamil Malar for Mr.T.Lajapathi Roy
For Respondent	:	No Appearance

ORDER

This Criminal Revision Case has been filed against the Judgment in C.A.No.31 of 2013 on the file of the learned Principal Sessions Judge, Karur, dated 12.09.2015.

2.This case is arising out of Section 138 of the Negotiable Instruments Act. The respondent / complainant filed a complaint against this petitioner under Section 138 of NI Act before the learned Judicial Magistrate, Fast Track Court, Karur and the same was taken on file in S.T.C.No.115 of 2011 and in conclusion, the trial Court found this revision petitioner / accused guilty, convicted and sentenced him to undergo six months simple imprisonment and imposed a fine of Rs.4,000/-, in default to undergo simple imprisonment for 30 days.

3.As against the conviction and sentence, the revision petitioner / accused filed an appeal before the learned Principal Sessions Judge, Karur in Criminal in C.A.No.31 of 2013 and the appellate Court by its judgment dated 12.09.2015, dismissed the appeal by modifying the sentence of the trial Court to that of fine of Rs.2,77,000/- and in default, to undergo simple imprisonment for a period of six months, out of the fine amount, Rs.2,75,000/- was ordered to be paid to the respondent / complainant and the balance amount was ordered to be remitted to the Government.

4.Aggrieved over the findings of the trial Court and the appellate Court, this revision case has been filed by the revision



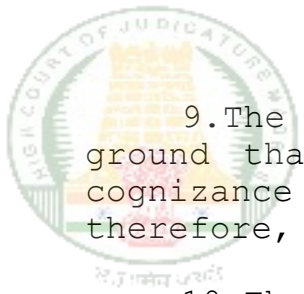
petitioner/accused.

5. Heard Ms. Tamil Malar, learned Counsel for the revision petitioner. Though this revision has been admitted and notice is served on the respondent on 27.06.2016 itself, there is no representation for the respondent. This revision case is pending from the year 2016. Therefore, this Court proceeds with the revision case.

6. The case of the complainant/respondent before the trial Court is that on 01.12.2002, the petitioner / accused borrowed a sum of Rs.3,00,000/- from the complainant and executed a promissory note [Exp1]. However, in spite of the complainant's demand to repay the borrowed money, the petitioner / accused did not repay the amount. While so, on 03.03.2004 the petitioner issued a post dated cheque [Exp2] dated 11.03.2004 for a sum of Rs.2,75,000/- as partial discharge of the borrowal. When the complainant presented the cheque on 11.03.2004 it was returned unpaid as 'funds insufficient'. At this juncture, the complainant issued a Notice dated 27.03.2004 [Exp5], which was received by the petitioner and he has sent a reply [Exp7] denying the averments of the complainant. Hence, the complaint was filed by the complainant.

7. It is seen that the revision petitioner has admitted his signature found in the cheque [Exp2] and therefore, both the Courts have rightly invoked the presumption under Section 118 and 139 of the NI Act. The main ground raised by the revision petitioner is that there is no legally enforceable debt between the revision petitioner and the complainant and he does not know the complainant at all. The revision petitioner's contention is that he borrowed a sum of Rs.50,000/- from one Nallusamy on 03.03.2001 and as a security he has issued two cheques bearing Nos.075008 and 075009. But, even after settling the loan amount, the said Nallusamy did not return the said two cheques. However, the said Nallusamy initiated proceedings in C.C.No.250 of 2003 before the learned Judicial Magistrate No.I, Karur for dishonour of cheque bearing No.072009, wherein the revision petitioner was convicted. Further revision petitioner mainly relying on the reply notice Ex.D1, which he issued to the said Nallusamy submitted that he has mentioned the cheque in dispute in the year 2003 itself and therefore, it cannot be said that he had issued the cheque in dispute to the complainant.

8. Further, the Courts held that ExD1 would show that the appellant/accused has issued the reply notice to the said Nallusamy mentioning the issuance of the cheque in dispute. Mere reference of the cheque in dispute in the reply notice [Exp7] does not help the accused to prove his contention. It is pertinent to note that the appellant/accused has not proved the nexus between the respondent/complainant and the said Nallusamy. Nothing was elucidated during the cross examination of PW1 to prove the defence.



9.The learned Counsel for the revision petitioner has taken a ground that the complaint was filed on 23.04.2004, whereas, the cognizance was taken only after two years, i.e., on 05.04.2006 and therefore, the delay in taking cognizance is legally bad in law.

10.Though the petitioner has taken this ground before this Court, such a ground has not been taken before the Courts below and further, such a point is answered by the Hon'ble Supreme Court **in A.Vinayagam and three others Vs. Dr.Subash Chandran and another**, reported in **2000 (I) CTC 225**, wherein it was held that when the complainant presents the case to the Magistrate, that is not the stage of examining the defects and it is not for the Magistrate to examine the so called defects in the complaint and all that the Magistrate has to do is to consider the same by ordering the examination complainant and / or as the case may be, his witnesses. It was further held that the act of the Court should not prejudice any one.

11.In this case the complainant has filed the complaint on 23.04.2004 itself and it appears, it was returned for some defects and after representation, it was taken on file on 05.04.2006. Though the complaint was taken on file nearly after two years, in view of the settled principle, such act of the court cannot prejudice the complainant and therefore, this ground raised by the petitioner at this stage of revision fails.

12.The scope of Criminal Revision under Section 397 r/w 401 CrPC is very limited and this Court cannot re-appreciate the evidence, unless and until there is a illegality, perversity or impropriety in the findings of the trial Court and the appellate Court.

13.The grounds raised by the petitioner in this revision, do not lead to any illegality, perversity or impropriety in the findings of the Court below.

14.Accordingly, the criminal revision case is dismissed. The judgment dated 12.09.2015 in C.A.No.31 of 2013 on the file of the learned Principal Sessions judge, Karur is hereby confirmed. The trial Court is directed to secure the revision petitioner and confine him to prison to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CS-I)

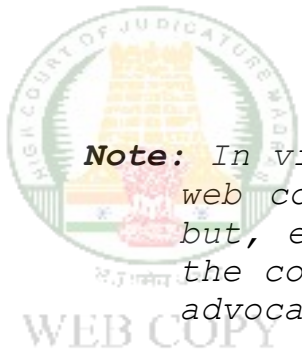
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Sub Assistant Registrar(CS)

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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 Principal and District
and Sessions Judge,
Karur.
- 2.The Judicial Magistrate,
Fast Track Court,
Karur.
- 3.-do-Thro The Chief Judicial Magistrate,Karur.
- 4.The Section Officer , Criminal Section ,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-14025[F] dated
13/08/2020)

**Cr1.R.C. (MD) .No.61 of 2016
12.08.2020**

**SJ(CO)
AP(16/10/2020) 4P 7C**