



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl. R.C. (MD)No.682 of 2016

WEB COPY

V.Kumaresan

.. Petitioner/Appellant/
Sole Accused

Vs.

S.Sivasubramania Marthandan

.. Respondent/Respondent/
Complainant

Prayer : This Criminal Revision is filed under Sections 397 r/w. 401 and 482 of Cr.P.C., to call for the entire records pertaining to the Judgment rendered by the learned Additional District and Sessions Judge, Virudhunagar in C.A.No.14 of 2010 vide his Judgment dated 27.09.2016 as well as the Judgment delivered by the learned Judicial Magistrate No.II, Virudhunagar, in S.T.C.No.1103 of 2007 vide his Judgment dated 10.06.2010 and set aside the same and consequently acquit the petitioner honorably.

For Petitioner : Mr.R.Anand

For Respondent : Mr.G.Mariappan

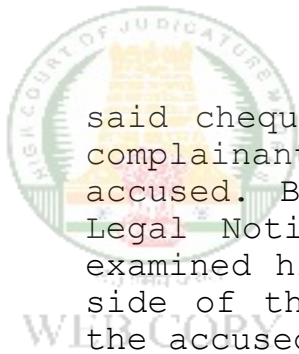
ORDER

Heard the learned counsel on either side.

2. The revision petitioner was prosecuted for the offence under Section 138 of the Negotiable Instruments Act in S.T.C. No.1103 of 2007 on the file of the Judicial Magistrate No.II, Virudhunagar.

3. The case ended in conviction and sentence. The same was questioned by the revision petitioner before the Additional District and Sessions Judge, Virudhunagar, by filing C.A.No.14 of 2010. By Judgment dated 27.09.2016, the appellate Court confirmed the Judgment passed by the trial Court and dismissed the appeal. Challenging the same, this criminal revision came to be filed.

4. The case of the complainant is that the accused had borrowed a sum of Rs.2,00,000/- in September 2006 and towards discharge of the said liability issued complaint cheque Ex.P.1. The



said cheque was dishonoured on being presented for collection. The complainant issued Ex.P.4 legal notice. It was received by the accused. But he did not comply with the demand set out in Ex.P.4 Legal Notice, instead of issuing Ex.P.6 Receipt. The complainant examined himself as P.W.1 while one Gopalnathan was examined on the side of the accused. Ex.D.1 and Ex.D.2 were marked on the side of the accused.

5. It appears from a reading of the evidence on record that the revision petitioner had given the complaint cheque in question as a guarantor and there was no direct borrowal by him. But then, Section 138 of the Negotiable Instruments Act does not contemplate that the petitioner should have actually borrowed the amount in question from the complainant. It is enough, if the cheque was issued towards discharge of liability. The liability of the accused who is a guarantor is co-extensive with that of the borrower. The guarantor need not have actually borrowed from the complainant. If the cheque had been given in the capacity of the guarantor, still the offence under Section 138 of Cr.P.C. is attracted.

6. Therefore, I cannot interfere with the findings of the Courts below. The learned counsel appearing for the revision petitioner states that the petitioner would pay the cheque amount of Rs.2,00,000/- within a period of two months. The time sought for by the petitioner is granted. Therefore, even while confirming the conviction imposed on the revision petitioner, I am of the view that some modification in the matter of sentence is called for. The sentence imposed on the petitioner 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 S.T.C.No.1103 of 2007 on the file of the Judicial Magistrate No.II, Virudhunagar, 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 revision petitioner.

iii) If the revision petitioner fails to deposit the cheque amount within the time stipulated above, the sentence imposed on the revision petitioner by the Court below will be automatically restored. If the revision petitioner makes deposit of the cheque amount within the time stipulated above, the sentence imposed on the revision petitioner by the Court below will not be implemented.

7. The petitioner is said to be a retired college lecturer. I make it clear that the outcome of this revision case will not have any bearing in any manner on the rights of the revision petitioner as a pensioner. It will not amount to any disqualification.



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

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1. The Additional District and Sessions Judge,
Virudhunagar.
2. The Judicial Magistrate No.II,
Virudhunagar.
- 3.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

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KMK(CO)

NR (06/01/2020) 3P : 5C