



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.09.2020

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.R.C. (MD).No.817 of 2016

and Crl.M.P(MD).Nos.11946 & 11947 of 2016

Yuvaraj

... Petitioner/Appellant/Accused

Vs.

B.Senthil Muthu

...Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case, filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records of the learned Sessions Judge/ Mahalir Neethimandram (Fast Track Mahila Court), Karur, in Crl.A.No.69 of 2016 by Judgment, dated 23.11.2016, confirming the conviction and modifying the sentence of imprisonment imposed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur in C.C.No.525 of 2013 by the Judgment dated 26.09.2016 and set aside the Judgments of the Courts below.

For Petitioner : Mr.T.Veerakumar

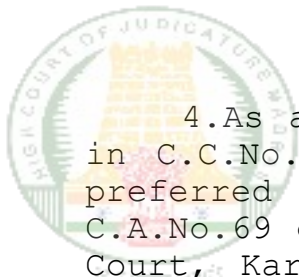
ORDER

This criminal revision case is filed by the accused, who was found guilty by the trial court namely learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur in C.C.No.525 of 2013, dated 26.09.2016 and by the Judgment of the Sessions Court / Mahalir Neethimandram (FTC), Karur, in C.A.No.69 of 2016 dated 23.11.2016, for the offence under Section 138 of the Negotiable Instruments Act.

2.The brief facts of the case are as follows:

The respondent Senthil Muthu filed a private complaint as against the petitioner / accused for the offence under Section 138 r/w 142 of the Negotiable Instruments Act, that this revision petitioner borrowed a sum of Rs.5 lakhs from him and also executed a promissory note, dated 02.02.2012. In discharge of the said liability, on 31.07.2013, the petitioner / accused issued a cheque bearing No.0263075 of State Bank of India, Karur Branch. The cheque, when it was presented, returned unpaid as 'funds insufficient'. Therefore, after issuing the statutory notice as required under the Negotiable Instruments Act, the said complaint was filed, before the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur and the same was taken on file in C.C.No.525 of 2013.

3.The trial Court on conclusion of the trial found the revision petitioner guilty of the offence under Section 138 of the Negotiable Instruments Act, convicted and sentenced him to undergo simple imprisonment for one year with a fine of Rs.5,000/-, with a default sentence to undergo one month simple imprisonment.



4.As against the order of conviction passed by the trial Court in C.C.No.525 of 2013, dated 26.09.2016, this revision petitioner preferred an appeal before the Court of Sessions, Karur, in C.A.No.69 of 2016 and the learned Sessions Judge, Fast Track Mahila Court, Karur, by modifying the sentence of imprisonment from one year to six months, partly allowed the appeal, by Judgment dated 23.11.2016. Aggrieved over the same, the petitioner had filed the present revision petition.

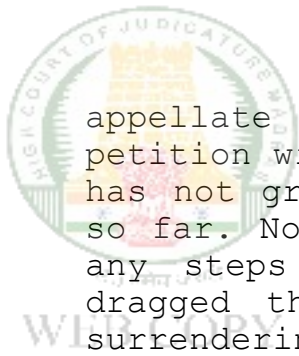
5.Heard Mr.T.Veerakumar, learned counsel appearing for the petitioner. Though notice has been ordered to the respondent in the year 2016, service of notice on the respondent has not been effected so far.

6.The learned counsel for the revision petitioner submits that the petitioner did not issue the cheque in dispute as alleged by the respondent/complainant and the signature found in the cheque Ex.P1 was disputed. However both the trial Court as well as the appellate Court did not consider this contention of the petitioner and negatived the same. According to the learned counsel for the petitioner, the cheque, which was given to one Thangavel has been misused and a suggestion was also made in this regard to the complainant and he did not deny the same, therefore, the petitioner has rebutted the presumption as contemplated under the Negotiable Instruments Act. According to the petitioner, the cheque in dispute was not given to the complainant and there is no legally enforceable debt between the complainant and the petitioner. PW2 is the scribe of the pronote and PW3 is the author of pronote Ex.P1 and they are close relatives and without considering the same, the trial Court as well as the Appellate Court erred by convicting this petitioner.

7.This Court paid its anxious consideration to the submissions made on behalf of the petitioner and also perused the available materials.

8.This revision case is filed as against the concurrent findings of the trial Court and the appellate Court. The revision petitioner though disputed the signature, has not disputed that it is not his cheque [ExP1]. He claims that it was given to one Thangavel and not to the respondent. Though the petitioner had an opportunity to establish the same during the trial, the petitioner has not taken any steps to compare the signature found in ExP.1.

9.The cheque Ex.P1 was issued in the year 2013 and the complaint was filed in the year 2013 after complying with all the statutory requirements under the Negotiable Instruments Act. The trial Court found the petitioner guilty by judgment dated 26.09.2016 and the appeal preferred by the petitioner was partly allowed on 23.11.2016. Though both Courts found the petitioner guilty, convicted and sentenced him to undergo imprisonment, the petitioner has not been present in Court since then. The petitioner was not present when the



appellate Court pronounced the judgment and moved this revision petition with an exemption application before this Court. This Court has not granted the relief and not admitted this revision petition so far. Notice alone was ordered and the petitioner has not taken any steps to serve notice on the respondent / complainant and dragged this revision petition for the past four years without surrendering before the trial Court and therefore, this revision petition is decided as to the admission of the writ petition itself.

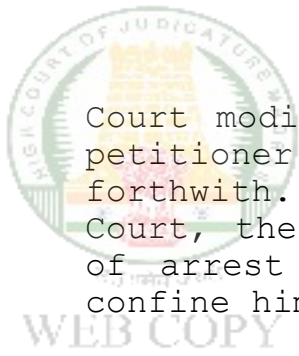
10.The cheque ExP1 is of the petitioner and it is not denied and the petitioner disputed the signature found in ExP1. Though the petitioner raised such a ground in the revision petition, he has not taken any steps to compare the signature found in ExP1 during the trial. The trial Court compared the signature found in ExP1 and found the petitioner guilty. The trial Court is empowered to verify the genuineness of the signature as per Section 73 of the Indian Evidence Act. When the cheque is not in dispute, the presumption is against the petitioner and the petitioner has not made out any case to rebut such presumption. Moreover, the petitioner has not surrendered even after the conviction of the trial Court and the appellate Court and evaded surrender by simply filing this revision petition and dragging the same without even taking any steps to serve notice on the respondent / complainant.

11.The main ground raised by the learned Counsel for the petitioner is that the cheque ExP1 was not issued by him to the complainant and it was issued to one Thangavel as such there is no legally enforceable debt or liability for him towards the complainant.

12.The Scope of Criminal Revision under Section 397 r/w 401 Cr.P.C 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.This Court in **Anbarasu Vs. Mukanchand Bothra**, reported in **2019 (3) MWN (Cr) DCC 1 (Mad)** held that while exercising the revisional powers under Section 397 r/w 401 Cr.P.C, the Court is required to find out if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum. The petitioner has not made out any case to interfere with the orders of the trial Court and the appellate Court that they are perverse and illegal.

14.The grounds raised by the petitioner do not lead to any illegality, perversity or impropriety in the findings of the appellate Court and therefore, this Court is not inclined to interfere with the same. Accordingly, the judgment of the appellate



Court modifying the sentence of the trial Court is upheld and the petitioner is directed to surrender before the trial Court forthwith. If the petitioner does not surrender before the trial Court, the trial Court is directed to issue a non bailable warrant of arrest as against this petitioner, secure the petitioner and confine him to prison to undergo the remaining period of sentence.

15. In the result, the criminal revision case is dismissed. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Sessions Judge / Mahalir Neethimandam
(Fast Track Mahila Court), Karur.

2. The Judicial Magistrate,
Fast Track Court Magisterial Level
Karur.

Crl.R.C(MD).No.817 of 2016
02.09.2020

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