



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI. R.C.(MD)No.371 of 2017

R.Selvakumar .. Revision petitioner/Appellant/Accused

Vs.

Velraj .. Respondent/Respondent/Complainant

Prayer : This Criminal Revision is filed under Section 401 of Cr.P.C., to set aside the order dated 28.11.2016 passed in C.A.No.17 of 2016 on the file of the I Additional District and Sessions Judge, Madurai, by modifying the order passed by the Judicial Magistrate No.II(FTC) Court, Madurai in S.T.C.No.169 of 2012 dated 24.03.2016.

For Petitioner : Ms.J.Balameenakshi,
Legal Aid Counsel.

For Respondent : Mr.B.Sukumar

ORDER

The revision petitioner herein was prosecuted for the offence under Section 138 of the Negotiable Instruments Act in S.T.C.No.169 of 2012 on the file of the Judicial Magistrate No.II/Fast Track Court at Magisterial Level), Madurai, by the respondent herein.

2. The case ended in conviction and sentence. Questioning the same, the petitioner filed C.A.No.17 of 2016 before the I Additional District and Sessions Judge, Madurai. Vide Judgment dated 28.11.2016, the conviction was confirmed and the sentence of imprisonment was modified by the appellate Court. Challenging the same, this criminal revision case came to be filed.

3. At the time of final hearing, the learned counsel who filed this revision case reported no instructions. Therefore, this Court directed the Registry to appoint a Legal Aid counsel. The learned Legal Aid counsel appeared before this Court and reiterated all the contentions set out in the memorandum of grounds. She would point out that the Courts below have not properly appreciated the defence of the accused. She wanted this Court to set aside the impugned Judgment and allow this revision case.

4. Per contra, the learned counsel appearing for the complainant/respondent submitted that the impugned Judgment do not



5. I carefully considered the rival contentions and went through the evidence on record.

6. The case of the complainant is that the accused was known to him and that on 10.01.2012, the accused took a hand loan of a sum of Rs.4,00,000/- from him and towards discharge of the said liability, the accused had issued the complaint cheque for a sum of Rs.4,00,000/- in favour of the complainant on 23.04.2012. The complainant presented the same for collection on 23.04.2012 and the same was returned unpaid on 24.04.2012 on the ground that the account had already been closed. The complainant issued Ex.P.6 legal notice. But then, the accused did not comply with the demand set out in the notice even after receiving the same. Thereupon, the private complaint came to be lodged.

7. The signature found in Ex.P.1 cheque is not in dispute. The complainant had examined himself as P.W.1 and one Gunasekaran was examined as P.W.2 and Ex.P.1 to Ex.P.9 were marked. The learned trial Magistrate rightly invoked presumption under Section 139 of the Negotiable Instruments Act against the accused. Though the accused examined himself as D.W.1 and one Baskaran Chellappa as D.W.2, the learned trial Magistrate held that the presumption could not be rebutted.

8. The learned Legal Aid counsel pointed out that even though the complainant claimed that the promissory note had been executed by the accused, the same was not marked in the trial. I do not find any substance in the said submission. The complaint itself clearly states that at the time of handing over Ex.P.1 cheque, the accused had taken back the promissory note. The case of the accused appears to be that he had dealings with a financier and the complaint cheque was given to him as security and the same had been misused by the financier by filing this complaint through the respondent herein.

9. I do not find this defence to be probable. If the accused had given the cheque as security to the financier and the same was not returned, certainly, the accused would have written a letter to the financier asking for the return of the cheque. No such communication has been marked. If the financier had misused the cheque, certainly, the accused could have given a criminal case against him. No such document has been brought out. In these circumstances, the learned trial Magistrate rightly found the accused guilty of the offence with which he was charged. The appellate Court had also confirmed the conviction. I am only exercising the revisional jurisdiction. I cannot re-appreciate the evidence, unless it is shown that the findings are vitiated by any material irregularity or perversity. The submissions advanced by the learned Legal Aid counsel do not persuade me to go to such conclusion.



10. I confirm the finding of guilt rendered by the Courts below. It is seen that the appellate Court itself had modified the sentence. Taking note of the mitigating circumstances pleaded by the learned Legal Aid counsel appearing for the petitioner, the sentence of imprisonment imposed on the petitioner is modified as follows:-

i) The revision petitioner is directed to deposit the cheque amount of Rs.4,00,000/- (Rupees Four Lakhs only) to the credit of S.T.C. No.169 of 2012 on the file of the Judicial Magistrate No.II/Fast Track Court at Magisterial Level), Madurai, within a period of eight weeks from the date of receipt of a copy of this order.

ii) On such deposit, the same can be withdrawn by the complainant without notice to the revision petitioner.

iii) If the revision petitioner fails to deposit the cheque amount within the time stipulated above, he will have to undergo the default sentence of six months Simple Imprisonment. If the revision petitioner makes the deposit of the cheque amount within the time stipulated above, the sentence modified by the appellate Court will not be implemented.

11. With this modification, this criminal revision case is partly allowed.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pmu

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 I Additional District and Sessions Judge,
Madurai.



2. The Judicial Magistrate No.II (FTC) Court,
Madurai.

3. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai (2 copies).

Crl. R.C. (MD) No. 371 of 2017
16.12.2020

ark(CO)
TR(19.01.2021) 4P 5C