



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

Crl.R.C(MD).No.421 of 2017

and

Crl.M.P(MD).Nos.4302 and 4303 of 2017

WEB COPY

S.Radhakrishnan

... Petitioner/Appellant/Accused

Vs

K.Jeyaraman

... Respondent/Respondent/Complainant

PRAYER: Petition filed under Section 397 r/w 401 of Code of Criminal Procedure, to call for the records of the learned Sessions Judge/Mahalir Neethimandram (Fast Track Mahila Court), Karur in Crl.A.No.7 of 2017 by judgment dated 04.03.2017 confirming the conviction and sentence of imprisonment imposed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur in STC.No.498 of 2011 by the judgment dated 23.12.2016 and set aside the judgments of the Courts below and acquit the petitioner.

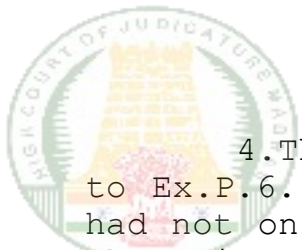
For Petitioner : Mr.D.Rameshkumar
For Respondent : Mr.V.Balaji

ORDER

Heard the learned counsel on either side.

2.The revision petitioner was prosecuted for the offence under Section 138 of the Negotiable Instrument Act in STC No. 498 of 2011 on the file of the Judicial Magistrate/Fast Track Court at Magisterial level, Karur. The case ended in conviction and sentenced. Questioning the same, revision petitioner filed C.A.No.7 of 2017 before the Fast Track Mahalir Court/Sessions Court, Karur and vide judgment dated 04.03.2017, the judgment of the trial Court was confirmed. Challenging the same, this Revision Case came to be filed.

3.The case of the complainant is that, the accused approached him on 07.01.2007 and borrowed a sum of Rs.4,25,000/- as loan and that towards discharge of the said liability, the complaint cheque (Ex.P.2) dated 15.06.2007 was issued for a sum of Rs.4,04,000/-. The cheque was presented for collection, but it was returned unpaid. The complainant issued Ex.P.4-notice dated 26.06.2007. The accused received the same and issued reply dated 20.07.2007 (Ex.P.6). Since the demand set out the notice was not complied with, STC No. 498 of 2011 came to be filed.



4.The complainant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.6. The accused marked Ex.D.1 and Ex.D.2. The complainant had not only filed the complaint cheque, but also Ex.P.1(Pro-note). The signature found in the cheque is also not in dispute. Therefore, the Court below rightly come to conclusion that Section 139 of the Negotiable Instrument Act is liable to be invoked against the accused and that the accused could not rebut the said presumption.

5.I find no ground to take a different view. In fact, the learned counsel for the accused also does not seriously challenge the finding of guilt. He only wanted sufficient time for making the payment. In this view of the matter, even while confirming the conviction imposed on the petitioner, the sentence is modified as follows:

The petitioner shall deposit the cheque amount of Rs. 4,04,000/- to the credit of STC No.498 of 2011 on the file of the learned Judicial Magistrate/Fast Track Court, Karur, withing a period of 3 months from the date of receipt of a copy of this order. On such deposit, the complainant can withdraw the same. If the cheque amount is deposited within the time mentioned above, the sentence imposed on the accused will not be implemented. If he fails to comply with aforesaid direction, the sentence imposed by the Court below will be automatically enforced.

6.With the above modification in the matter of sentence, the Criminal Revision Case is partly allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS I)

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/ /2021

Sub Assistant Registrar(CS)

rmk

To

1.The Sessions Judge/Mahalir Neethimandram
(Fast Track Mahila Court), Karur.

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

Crl.R.C(MD).No.421 of 2017

CK(CO)

KK(08.01.2021) 2P 3C