



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C (MD)No.427 of 2017

WEB COPY

Viswanathan

... Petitioner/Appellant/Accused

Vs

Shobana

... Respondent/Respondent/Complainant

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records of the learned Additional District and Sessions Judge, Theni at Periyakulam in C.A.No.61 of 2013 by judgment dated 21.02.2017 confirming the conviction and sentence of imprisonment for 6 months and imposed the fine of Rs.5,000/- in default of payment of fine to undergo simple imprisonment of one month for the offence under Section 138 of Negotiable Instrument Act imposed by the learned Judicial Magistrate Fast Track Court (ML), Theni in S.T.C. No.321 of 2011, by the judgment dated 21.08.2013 and set aside the judgment of the Courts below and acquit the petitioner.

For Petitioner	: Mr.R.Shankar Ganesh
For Respondent	: Mr.V.O.S.Kalaiselvam

ORDER

The respondent herein filed STC No.321 of 2011 on the file of the Judicial Magistrate (Fast Track Court Magisterial Level), Theni, against the revision petitioner herein for the offence under Section 138 of Negotiable Instrument Act.

2. The case of the complainant is that the accused is a relative. The accused had borrowed a sum of Rs.4,00,000/- on 10.01.2011. He issued Ex.P.1 Post dated cheque, favouring the complainant. It was presented for collection on 21.02.2011. It was returned unpaid for the reason of "insufficient funds" in the account of the accused. The complainant received Ex.P.3 returned memo on 11.03.2011. He issued Ex.P.5 statutory notice, dated 31.03.2011, calling upon the accused to pay the cheque amount of Rs.4,00,000/-. Though the accused received the notice on 04.04.2011, he did not comply with the demand. Therefore, the complainant had to institute the said private complaint.

3. The complainant examined herself as P.W.1 and marked Exs.P.1 to Exs.P.6. On the side of the accused, no evidence was adduced.



4.The learned Trial Magistrate, by judgment dated 21.08.2013 found the accused guilty and sentenced him to undergo simple imprisonment for six months and levied a fine of Rs.5,000/-. Questioning the same, the revision petitioner filed a Criminal Appeal No.61 of 2013 before the Additional District and Sessions Judge, Theni at Periyakulam. By judgment, dated 21.02.2017, the Appellate Court confirmed the judgment of the Trial Court and dismissed the Appeal. Challenging the same, this revision came to be filed.

5.Heard the learned counsel on either side.

6.The learned counsel for the revision petitioner had taken a ground that the statutory notice was issued after the lapse of the statutory period. It is seen that the statutory notice was issued on 31.03.2011. The return memo was received by the complainant from his banker only on 11.03.2011. Thus, it is within the statutory period of 30 days. Therefore, I do not find any substance in this objection.

7.The petitioner's counsel would contend that the cheque in question was given as a security to the complainant who is the relative and that it was misused. But then this contention is being made without being backed by sufficient evidence. I am exercising only the revisional jurisdiction. The Courts below concurrently found the petitioner guilty. The findings of the Courts below, has not be shown to be perverse or irregular. Therefore, I am of the view that no interference is called for. However, taking note of the other circumstances pleaded by the revision petitioner's counsel even while confirming the conviction, I am modifying the sentence as follows :

1.The revision petitioner is directed to deposit the cheque amount of Rs.4,00,000/- to the credit of STC No.321 of 2011 on the file the learned Judicial Magistrate (Fast Track Court Magisterial Level), Theni, within a period of four months from the date of receipt of a copy of this order.

2.It is open to the complainant to withdraw the same, without notice to the petitioner herein.

3.If the deposit is made within the aforesaid period, then the sentence of imprisonment imposed by the Courts below will not be enforced. If the deposit is not made within the aforesaid period, the sentence of imprisonment imposed by the Courts below will be enforced.



8. With these modifications, the Criminal Revision Case is partly allowed.

Sd/-

Assistant Registrar(CS)

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// True Copy //

/ /2021

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 Additional District & Sessions Judge,
Theni at Periyakulam, Theni District.
- 2.The Judicial Magistrate
(Fast Track Court Magisterial Level),
Theni.

+1 CC to Mr.V.O.S.KALAISELVAM, Advocate SR.No. 27078

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22.12.2020

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