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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl. R.C. (MD) No. 614 of 2017 and

CRL.M.P. (MD) Nos. 6976 & 6977 of 2017

A.Raja Mohamed

... Petitioner/Appellant/Accused

Vs.

S.Manikavel

... Respondent/Respondent/
Complainant

Prayer : This Criminal Revision is filed under Sections 397 & 401 of Cr.P.C., to call for the records pertaining to the case in C.A.No.27 of 2015 on the file of the Fast Track Mahila Court, Sivagangai and set aside the conviction and sentence passed in C.A.No.27 of 2015 dated 05.05.2017 on the file of the Fast Track Mahila Court, Sivagangai confirming the Judgment made in C.C.No.10 of 2013 dated 21.04.2015 on the file of the Judicial Magistrate, Fast Track Court, Karaikudi and to allow this revision.

For Petitioner : Mr.C.Ezhilarasu,
Legal Aid Counsel.

For Respondent : Mr.S.Ravi

ORDER

The petitioner was prosecuted by the respondent for the offence under Section 138 of the Negotiable Instruments Act in C.C.No.10 of 2013 on the file of the Judicial Magistrate, Fast Track Court, Karaikudi.

2. The case of the complainant is that the revision petitioner was his friend. The revision petitioner availed a loan of Rs.2,00,000/- from him on 07.08.2009 and towards discharge of the said liability, the revision petitioner is said to have issued Ex.P.1 cheque dated 09.10.2009 for a sum of Rs.2,00,000/- favouring the complainant. When the cheque was presented for collection, it was returned unpaid for the reason of insufficiency of funds in the account maintained by the accused. The complainant issued Ex.P.4 legal notice dated 15.10.2009. The accused instead of complying with the demand set out in the notice, gave a reply. Thereafter, the complainant had filed the impugned private complaint. The complainant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.6. The accused examined himself as R.W.1. On the side of the accused, no document was marked. The learned trial Magistrate after a detailed consideration of the evidence on record found the accused guilty of the offence with which he was charged and sentenced him to undergo six months Simple Imprisonment. The accused was also directed to pay the cheque amount of Rs.2,00,000/- within a period



of two months thereafter. Default sentence was also imposed. Aggrieved by the same, the accused filed C.A.No.27 of 2015 on the file of the Fast Track Mahila Judge, Sivagangai. The appellate Court by the impugned Judgment dated 05.05.2017 dismissed the appeal. Challenging the same, this criminal revision case came to be filed.

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3. When the matter was taken up for disposal, the learned counsel who filed this revision did not appear. Therefore, this Court directed the Registry to appoint a Legal Aid counsel to represent the petitioner. Accordingly, the learned Legal Aid counsel who appeared before this Court, reiterated all the contentions set out in the memorandum of grounds. He would contend that the cheque in question was given by the petitioner to a friend and that the same was misused.

4. I am not persuaded by the said argument of the learned Legal Aid counsel. The petitioner has not examined the person to whom the cheque in question was said to have been entrusted. The signature found in Ex.P.1 cheque is admitted to be that of the revision petitioner.

5. In view of the averments deposed by the complainant, the presumption under Section 139 of the Negotiable Instruments Act, 1988 got triggered. It is for the accused to rebut the presumption by proving by preponderance of probability. The Courts below have concurrently found that the presumption has not been rebutted. They rightly held that the petitioner is found guilty of the offence. The contentions urged by the learned counsel appearing for the petitioner do not persuade me to hold that the findings of the Courts below are vitiated by any perversity or material irregularity. Exercising my revisional jurisdiction, I find it difficult to take a different view.

6. However, taking note of the mitigating circumstances pleaded by the counsel for the petitioner, even while confirming the Judgment of conviction, 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.2,00,000/- (Rupees Two Lakhs only) to the credit of C.C.No.10 of 2013 on the file of the Judicial Magistrate, Fast Track Court, Karaikudi, 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 Courts below will be automatically restored. If the revision petitioner makes the 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. With this modification in the matter of sentence, this criminal revision case is partly allowed. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar

// 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 Fast Track Mahila Judge,
Sivagangai.
2. The Judicial Magistrate, Fast Track Mahila Court,
Karaikudi.
- 3.-do-thro The Chief Judicial Magistrate,
Sivagangai District.
- 4.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.(2C)

Copy To: The Authorized Officer,
Legal Aid Services Authority,
Madurai Bench of Madras High Court, Madurai.

Crl. R.C. (MD) No. 614 of 2017
18.12.2020

(SMV) CO
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