



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.98 of 2017

and

Crl.M.P(MD).No.858 of 2017

Veeraraghaan

... Petitioner/Appellant/Sole Accused

Vs

K.R.Ganesan

... Respondent/Respondent/Complainant

PRAYER: Petition filed under Section 397 r/w 401 of Code of Criminal Procedure, to set aside the order passed in C.A.No.75 of 2015 dated 11.03.2016 on the file Fast Track Mahila Court, Karur in C.C.No.294 of 2013 dated 10.10.2015 on the file of the learned Judicial Magistrate (Fast Track Court at Magisterial Level), Karur.

For Petitioner

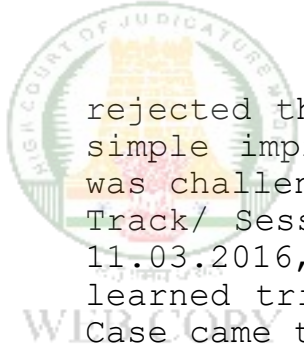
: Ms.M.Maria Vinola

ORDER

Heard the learned counsel appearing for the revision petitioner. Though the respondent/complainant has been served and his name is printed in the caust list, there is no appearance on his behalf.

2.The respondent filed CC No. 294 of 2013 on the file of the Judicial Magistrate/Fast Track Court at Magisterial level, Karur against the petitioner herein under Section 138 of Negotiable Instrument Act. The case of the complainant is that on 12.03.2010, the accused borrowed a sum of Rs. 2,10,000/- from him and that towards discharge of the said liability, issued Ex.P.2-cheque, dated 11.12.2012 favouring the complainant for Rs.3,40,000/-. Though the cheque was presented for collection on 13.12.2012, it was returned dishonoured for the reason 'fund insufficient'. The complainant re-presented the cheque on 21.01.2013 and again, it was returned dishonoured on the same day. Ex.P.7- Notice dated 28.01.2013 was issued and the same was received by the accused on 31.01.2013. The accused did not comply with the demand set out in the notice. Then, the aforesaid private complaint came to be filed.

3.The complainant examined himself as PW1 and marked Ex.P.1 to Ex.P.8. The accused examined himself as D.W.2 and one Dhanabal as P.W.1. The defence of the accused is that, he had transaction only with Sri Nithi and complaint cheque was given and that the same was misused by the complainant and according to the accused, he has nothing to do with the complainant. The learned trial Magistrate



rejected the said defence and sentenced the accused to three months simple imprisonment, fine of Rs.1,500/- was also levied. The same was challenged in C.A No. 75 of 2015 on the file of the Mahalir Fast Track/ Sessions judge, Karur. The Appellate Court by judgment dated 11.03.2016, dismissed the appeal and confirmed the judgment of the learned trial Court Magistrate. Challenging the same, this Revision Case came to be filed.

4.The learned counsel, who filed the revision case, reported 'no instructions'. Therefore, this Court appointed a Legal Aid Counsel. The learned Legal Aid Counsel reiterated the contentions set out in the memorandum of grounds. She would point out that, the cheque given as security by the accused to his financier has been misused by the complainant herein.

5.I am not persuaded by the said submission. As rightly held by the Courts below, if the accused had settled the liability with his financier, certainly, he would have demanded return of the cheque given as security. No such communication or document is forthcoming. More than anything else, the failure to respond to the notice issued by the complainant also, is a circumstance that goes against the accused. I am only exercising revisional jurisdiction. The learned trial Magistrate as well as the Appellate Court have found the accused guilty. The Courts below have held that the signature found in the complaint cheque is not in dispute. The complainant had also marked Ex.P.1- promissory note. Therefore, the presumption under Section 139 of the Negotiable Instrument Act was invoked against the accused and he could not rebut the same. I am of the view that the findings of the Courts below do not suffer from any material irregularity. Therefore, I do not find any ground to interfere. The judgements of the Courts below are confirmed. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar(CS)

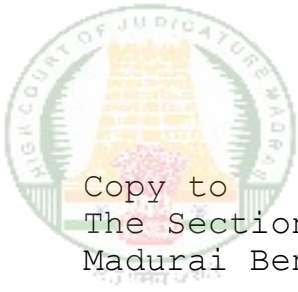
rmk

To

1.Fast Track Mahila Court, Karur.

2.The Judicial Magistrate

(Fast Track Court at Magisterial Level), Karur.



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

WEB COPY +1 CC to Mr.M.MARIA VINOLA, Advocate SR.No. 25837

Crl.R.C(MD).No.98 of 2017

MJ(CO)
TR(08.01.2021) 3P 6C