



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.07.2021

Pronounced on : 02.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.200 of 2021

Haris Meethal Kallai ... Petitioner/Complainant

vs.

Faisal Muhammed V.P. ... Respondent/Accused

PRAYER: This Criminal Revision is filed under Section 397 r/w Section 401 of the Code of Criminal Procedure, 1908, to set aside the order dated 21.09.2020 in S.T.C.No. 770 of 2015 on the file of the learned Judicial Magistrate, Mahe in as much as it imposes a meagre fine of Rs.5,000/- (Rupees Five Thousand Only) and direct the respondent herein to pay a fine which is equal or more than the cheque amount of Rs.40,00,000/- (Rupees Forty Lakhs Only) along with interest.

For Petitioner : Mrs.Gopika Nambiar

O R D E R

The present criminal revision has been filed to set aside the order dated 21.09.2020 in S.T.C.No. 770 of 2015 on the file of the learned Judicial Magistrate, Mahe in as much as it imposes a meagre fine of Rs.5,000/- (Rupees Five Thousand Only) and direct the respondent herein to pay a fine which is equal or more than the cheque amount of Rs.40,00,000/- (Rupees Forty Lakhs Only) along with interest.

2. The petitioner is the complainant and the respondent is the accused. The petitioner filed a private complaint under Section 200 of Criminal Procedure Code for the offence under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act' for short) against the respondent.

3. The learned Judicial Magistrate has taken cognizance of



the complaint and after completing formalities, taken the complaint on file in S.T.C.No. 770 of 2015. After enquiry, the learned Magistrate, found guilt of the respondent/accused for the offence under Section 138 of NI Act and convicted him and sentenced to undergo simple imprisonment for 1 year and also pay a fine of Rs.5,000/- in default to undergo simple imprisonment for 1 month.

4. Challenging the order of fine imposed by the learned Magistrate, the petitioner/complainant has filed the present revision before this Court.

5. Learned counsel for the petitioner would submit that while convicting the respondent/accused under Section 138 of NI Act, the learned Magistrate should have imposed a fine by way of compensation equal to twice the amount of cheque or equal to the cheque amount with interest and cost. Further, he would submit that the purpose of instituting the complaint under Section 138 of NI Act is for recovery of the cheque amount expeditiously in addition to the punishment of imprisonment. Despite found the accused guilty for the offence under Section 138 of NI Act, the learned Magistrate imposed fine of Rs.5,000/- only, which is against the scope and object of the Negotiable Instruments Act, 1881.

6. Further, he would submit that the learned Magistrate failed to follow the dictum laid down by the Hon'ble Supreme Court in a catena of decisions including R.Vijayan vs Baby and Another reported in (2012) 1 SCC 260 and H.Pukhraj vs D.Parasmal reported in (2015) 17 SCC 368, wherein it was held that in all cases of conviction under Section 138 of NI Act, the Courts should uniformly exercise the powers to levy fine upto twice the cheque amount or equal to cheque amount along with interest and cost as compensation.

7. Learned Magistrate failed to consider the aforesaid legal position that in a proceeding under Section 138 of NI Act, the simple plea of no means taken by the accused has no significance.

8. Despite notice served to the respondent, the respondent has not appeared before the Court and purposefully evading the cheque amount but the learned Magistrate failed to consider the same. Though the learned Magistrate found the guilt of the respondent and convicted and sentenced him to undergo 1 year simple imprisonment, failed to give a direction to pay either twice the cheque amount or equal to cheque amount with interest and cost. Therefore, the complainant is constrained to file the present revision.



9. Though in the present criminal revision, this Court issued notice to the respondent and the said notice duly served on the respondent on 26.04.2021, there was no representation for the respondent, either in person or through counsel. The Court also has given several opportunities and since the accused has not filed any appeal before the Court of Session and this Court hearing arguments of the learned counsel for the petitioner, passed the following order.

10. The case of the petitioner/complainant is that the respondent/accused borrowed a sum of Rs.40,00,000/- from the petitioner. To discharge the liability, the respondent has given two cheques bearing Registration No.(i) 020132 dated 01.04.2015 and (ii) No.020133 dated 01.04.2015 for Rs.20,00,000/- each and the petitioner presented the said cheques for collection before the Canara Bank, Pallur Branch and the said cheques were returned by the bank with an endorsement 'Funds Insufficient' and statutory notice was sent to the respondent/accused. The respondent acknowledged the said notice and sent a false reply. Therefore, the petitioner filed a complaint before the Judicial Magistrate. The learned Magistrate taken the complaint on file and subsequently, during the enquiry, the complainant was examined himself as PW.1 and his wife was examined as PW.2 and one Binu Joy was examined as PW.3 and on the side of the petitioner/complainant 15 documents were marked as Ex.P1 to Ex.P15.

11. The main defence taken by the respondent/accused is that the petitioner and the respondent agreed for the joint business and the said agreement was not accomplished. Further, the cheques were issued in the name of proprietary concern. The respondent had signed the cheque as proprietor and no notice was issued to the proprietary concern and notice has been issued only in the name of the respondent in an individual capacity and the said defence was negated by the Magistrate.

12. Since the proprietorship concern is not a legal entity. The proprietor is responsible for any transaction made in the name of the proprietary concern. Though the learned Magistrate found that the cheques were issued to discharge legally enforceable debt and the petitioner proved his case and the learned Magistrate also drawn the presumption under Section 139 of NI Act and found that the respondent not rebutted the presumption in the manner known to law and convicted the respondent and sentenced him to undergo 1 year simple imprisonment and to pay a fine of Rs.5,000/- in default to undergo 1 month simple imprisonment.

13. Aggrieved by the order of imposing inadequacy of fine, the petitioner has filed the present revision.



14. A reading of the entire materials would go to show that the petitioner has proved his case and the respondent admitted the signature in execution of cheques. The only defence taken by the respondent is that he issued cheques on behalf of proprietorship concern and proprietorship concern not impleaded as accused therefore the complaint is not maintainable.

15. As already stated, the proprietary concern has no legal entity and the proprietor alone is responsible for the same. Once, the respondent has admitted the signature and execution of cheques and the legal presumption that the cheques are issued to discharge legally enforceable debts, the petitioner has clearly proved his case and that the respondent has not rebutted the presumption in the manner known to law.

16. The Magistrate rightly accepted the case of the petitioner and convicted the respondent. However, imposed only a fine of Rs.5,000/- which is against the decisions of the Hon'ble Supreme Court. Time and again, it is stated that though the complaint under Section 138 of NI Act is civil in nature, while imposing fine, the Trial Court either should impose a fine equal to the cheque amount which may upto twice the cheque amount and a direction can be issued by way of compensation to compensate the loss caused by the complainant or otherwise if it is commercial transaction it may equal to cheque amount with interest and cost. Whereas, in this case, though the learned Magistrate found the guilt of the respondent and convicted and sentenced him, the learned Magistrate has not followed the guidelines of the Hon'ble Supreme Court while imposing fine.

17. In view of the foregoing discussion, the order passed by the learned Magistrate regarding payment of fine alone is modified from Rs.5,000/- to Rs.40,00,000/- which is equal to the cheque amount and the criminal revision case is allowed with the above modification.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

dm



To

1. The Judicial Magistrate,
Mahe,
Puducherry.

2. The Chief Judicial Magistrate,
(For Information) Puducherry.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/s.Gopika Nambiar, Advocate, S.R.No.44374

Cr1.R.C.No.200 of 2021

SPD (CO)
SU (27/12/2021)