

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.215 of 2019 &
Crl.M.P.Nos.2195, 2198 & 2199 of 2019

Kumar ... Petitioner/Appellant/Accused

Vs.

Parthasarathy ... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case filed under 397 r/w 401 of Cr.P.C. to set aside the Judgment passed by the learned Principal Sessions Judge, Kancheepuram at Chengalpattu in Criminal Appeal No.32 of 2016, dated 22.10.2018, by confirming the conviction and sentence imposed by the learned Judicial Magistrate No.II, Chengalpattu, by Judgment dated 29.07.2016 in S.T.C.No.300 of 2010.

For Petitioner : Mr.Jery V.V.Sundar
for M/s.M.Sathish Kumar

For Respondent : Mr.M.Raja

O R D E R

This Criminal Revision Case has been filed challenging the Judgment passed by the learned Principal Sessions Judge, Kancheepuram at Chengalpattu in Criminal Appeal No.32 of 2016, dated 22.10.2018, upholding the conviction and sentence imposed by the learned Judicial Magistrate No.II, Chengalpattu, by Judgment dated 29.07.2016 in S.T.C.No.300 of 2010.

2. The respondent herein as complainant has filed a private complaint under Section 200 of The Code of Criminal Procedure on the file of the learned Judicial Magistrate No.II, Chengalpattu, wherein the present revision petitioner has been arrayed as accused. It is stated in the complaint that the accused had borrowed a sum of Rs.1,30,000/- for his brother's marriage and had misappropriated a sum of Rs.1,10,000/- in land transaction and had misappropriated a sum of Rs.1,00,000/- in

the wages of the labourers and thus, the accused is liable to the complainant to the tune of Rs.3,40,000/-. When the complainant duly demanded and requested the accused for further repayments, the accused had issued post dated cheques and when the complainant presented the above said cheques for collection with his banker, the said cheques were returned with return memo stating Fund insufficient.

3. On the basis of the accusation made against the accused, the learned Judicial Magistrate No.II, Chengalpattu, has questioned the accused with regard to offence alleged to have been committed by him under Section 138 of The Negotiable Instruments Act and the same has been read over and explained to him. On the side of the complainant, P.Ws.1 to 3 have been examined and Exs.P.1 to P.6 have been marked.

4. When the accused had been questioned under Section 313 of the Code of Criminal Procedure as respects the incriminating circumstances appearing in evidence against him, he denied his complicity in the crimes. No oral and documentary evidence had been let in on the side of the accused.

5. The trial Court after analysing the evidence available on record has found the accused guilty under Section 138 of the Negotiable Instruments Act, and convicted and sentenced to undergo one month of Simple Imprisonment and to pay a compensation of Rs.4,00,000/- within one month from the date of the Judgment, in default, to undergo 3 months Simple Imprisonment.

6. Against the conviction and sentence, the accused as appellant has preferred Criminal Appeal No.32 of 2016 on the file of the learned learned Principal Sessions Judge, Kancheepuram at Chengalpattu.

7. The First Appellate Court, after reappraising the evidence, has confirmed the conviction and sentence passed under Section 138 of the Negotiable Instruments Act. Against the judgment passed in Criminal Appeal No.32 of 2016, the present Criminal Revision Case has been filed.

8. On a perusal of docket sheet, it could be seen that, this matter has been adjourned on several occasions viz., at the request of the learned counsel for the petitioner, the matter has been adjourned on 5 occasions, i.e., on 08.02.2019, 01.04.2019, 02.04.2019, 23.04.2019, 09.02.2021, and for non-appearance, the matter was adjourned on 3 occasions, viz., 08.01.2021, 04.03.2021, and even on one occasion, at the request of the learned counsel for the petitioner, the matter has been referred to Mediation and Conciliation Centre, and however, no

agreement was reached. Further, when the matter came up for hearing on 01.04.2021, there was no representation on behalf of the petitioner and this Court heard the submissions of the learned counsel for the respondent, and in order to give an opportunity to the petitioner, this Court has adjourned the matter today, viz., 09.04.2021, to contest the case, and the matter was directed to be listed under the caption 'for orders'. Even today, there is no representation for the petitioner. Therefore, this Court perused the original records in order to find out if there is any illegality or perversity in the order passed by the Courts below.

9. A perusal of the records, it shows that the signatures found in the cheques were admitted by the petitioner. Though the petitioner had taken a stand that the cheques were stolen by the respondent/complainant, the petitioner/accused has not substantiated the above fact with any oral or documentary evidences. Further, if the cheques were stolen by the respondent/complainant, the petitioner/accused would have taken steps with regard to the lost cheques either by giving a complaint to the Police Station or by giving information to his banker, but no steps had been taken by the petitioner/accused. While exercising revisional jurisdiction, this Court has to see as to whether any perversity in appreciating the evidence in deciding the case. Since the signature in the cheques are not denied by the revision petitioner/ accused, this Court can draw presumption under Sections 118 and 139 of the Negotiable Instruments Act. It is for the petitioner/accused to rebut the presumption. Admittedly, in this case, the revision petitioner has not rebutted the presumption in the manner known to law. Further, when the statutory notice was issued to the petitioner, the petitioner has not given any reply to the statutory notice.

10. While exercising revisional jurisdiction, this Court need not to sit in the armchair of the appellate Court and revisit the entire evidence and also reappreciate the same. At the same time, the Court has to find out as to whether any perversity in appreciation of evidence in the orders passed by both the Courts below.

11. On reading of the entire oral and documentary evidence, the trial Court, on proper appreciation of evidence, rightly convicted the petitioner/ accused. The appellate Court, as a fact finding Court, re appreciated the entire evidence, and dismissed the Appeal.

12. Therefore, this Court does not find any perversity in the Judgment of the both the Courts below and there is no merit

in the revision. Accordingly, the Judgment passed by both Courts below are hereby confirmed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

r n s

To

1.The Principal Sessions Judge,
Kancheepuram at Chengalpattu.

2.The Judicial Magistrate No.II,
Chengalpattu.

+1cc to Mr.M.Raja, Advocate SR.No.23183

+1cc to Mr.E.Felix Parthiban, Advocate SR.No.23177

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VBM(CO)
GMY (08/07/2021)



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