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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1691 of 2016
and
Crl.M.P.Nos.14038 & 14039 of 2016

Vidhyasagar

...Petitioner/Accused

Vs.

Somasekar

...Respondent/Complainant

PRAYER: This Criminal Revision Case has been filed under Section 397 and 401 of Cr.P.C., against the order dated 04.03.2015 by the learned Principal District and Sessions Judge, Krishnagiri District, in Cr.A.No.61 of 2014 confirming the judgment of the Trial Court in S.T.C.No.281 of 2013 dated 15.07.2014 by the Judicial Magistrate, Fast Track Court, Hosur.

For Petitioners : Mr.Venkatesan Chinnapayan
Legal Aid Counsel

For Respondent : No appearance

O R D E R

The accused is the revision petitioner herein.

2.Brief facts of the case are as follows:

(a).The revision petitioner herein/accused has taken a loan of Rs.3,00,000/- from the complainant on 13.05.2013, to discharge the antecedent debts and family necessity. To secure and repay the said loan amount, the accused has issued a post dated cheque, dated 20.07.2013, in Cheque No.002809, but the said cheque was returned as unpaid for the reasons "Funds Insufficient" by the accused banker viz., M/s.Indian Bank, Hosur Branch and the bank has sent a memo dated 26.07.2013, which was marked as Ex.P2. Followed thereby, the complainant has issued a legal notice dated 07.08.2013 through his counsel by RPAD and RPAD cover was returned as "Not claimed" on 12.08.2013, which was marked as Ex.P5.



(b)After complying the formalities, the respondent herein has preferred a complaint under Section 200 of Cr.P.C read with Section 138 to 142 of the Negotiable Instruments Act, in STC.No.281 of 2013, before the learned Judicial Magistrate, Fast Track Court, Hosur, based upon the cheque No.002809, dated 20.07.2013 for a sum of Rs.3,00,000/- and the learned Judge has convicted the revision petitioner/accused for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo six months simple imprisonment under Section 255(2) of Cr.P.C and ordered to pay a sum of Rs.3,00,000/- as compensation under Section 357 of Cr.P.C to the respondent herein/complainant.

(c).Aggrieved against the said conviction and sentence passed in STC.No.281 of 2013, the accused has preferred an appeal in Cr.A.No.61 of 2014, before the learned Principal District and Sessions Judge, Krishnagiri District and by an order dated 04.03.2015, the learned Judge has dismissed the same and confirmed the conviction and sentence passed by the Trial Court. Hence, the Criminal Revision Case.

3.During the trial, on behalf of the complainant, he himself was examined as PW1 and marked Ex.P1 to P5; on behalf of the accused, he himself was examined RW1 and one Rajendiran was examined as RW2 and oral or documentary evidence has been marked.

4.Heard the learned counsel for the revision petitioner and perused the materials placed on record.

5.The Legal Aid Counsel for the revision petitioner herein/accused would contend that both the Trial Court as well as the Appellate Court has not properly appreciated the facts and circumstances of the case in proper prospective and wrongly laid the conviction. He has also submitted that the cheque in issue was issued by the revision petitioner/accused only as a security for the amount due to be payable by his maternal uncle Devaraj and he has given blank signed cheque and subsequently, the same was manipulated.

6.Further, Legal Aid Counsel would state that as per the Income Tax rules, the accused cannot pay the amount more than Rs.20,000/- in cash and that the Trial Court on consideration of oral and documentary evidence, has come to the conclusion that though Ex.P5/legal notice returned as not claimed, under Section 27 of the General Caluses Act, it is held to be sufficient service. Further, the Trial Court has held that the summons in STC.No.281 of 2013 were served only in the said address, the service of summons under Ex.P5 is proper and further held that though a compromise was said to have been entered between the maternal uncle of the accused with the complainant, no such copy was filed nor the said maternal uncle was examined by the Trial Court to probablise the suggestive case. Furthermore, he would submit that due to the inconsistency in the evidence of PW1,



both the Trial Court as well as the Appellate Court ought to have held that versions of cross-examination of PW1 cannot be reliable.

7. Taking into consideration the legal presumption under Section 27 of the General Clauses Act, the Trial Court has rightly come to the conclusion that Ex.P5 was duly served and accordingly complaint under Section 138 of the Negotiable Instruments Act is probably laid before the Trial Court.

8. The next point is that in view of the settlement entered between the maternal uncle of the accused viz., Devaraj and private complainant, for the amount due by Devaraj, the accused had given three cheques and also one unfilled cheque, which were signed by him and the accused had also settled Rs.1,00,000/-. Though a defence case has been projected on the above lines, however, in connection with the alleged settlement no document has been filed and none was examined, assume significance.

9. Taking into consideration the evidence of PW1 coupled with Exs.P1 to P5, the Trial Court has rightly come to the conclusion that the private complainant has demonstrated the necessary ingredients to raise for the presumption under Section 139 of the Negotiable Instruments Act. In view of the statutory presumption, now it is for the accused/revision petitioner to rebut the presumption, to do so, the revision petitioner/accused has taken the plea that in the cross examination, PW1 has admitted that there was a money transaction between the maternal uncle of the accused viz., Devaraj and himself, but the further case is that the cheque was from the account of the accused and the signature found therein as that of the accused. The financial capacity of the private complainant remains unchallenged in the cross examination of PW1 assumes significance and though a plea was raised that the cheque in issue was given only as security in the settlement entered between the private complainant and the accused, none in connection with the said settlement was examined nor any document was produced before the Court and thereby, both the Courts below have rightly come to the conclusion that the revision petitioner/accused has failed to probablise the suggestive case to the presumption. Hence, the conviction and sentence laid by both the Courts below cannot be interfered at this revisional jurisdiction.

10. Accordingly, this Court is inclined to reduce the sentence imposed by both the Courts below to three months from six months and the compensation amount being the representation of the cheque amount, this Court is not inclined to reduce the same.

11. With the above modification this Criminal Revision Case stands partly allowed to the limited extent as indicated above. Consequently, connected miscellaneous petitions stand closed.



12. Service of Mr. Venkatesan, Legal Aid Counsel is hereby put on record.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge,
Krishnagiri District.
2. The Judicial Magistrate,
Fast Track Court,
Hosur.
3. The Chief Judicial Magistrate,
Krishnagiri (For Information)
4. The Member Secretary,
Legal Services Authority,
High Court,
Madras.
5. The Public Prosecutor,
High Court,
Madras.

+1cc to Mr. C. Venkatesan, Advocate, S.R.No.41907

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PA(CO)
RGA(06/10/2021)