



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	22.02.2021
DELIVERED ON	25.02.2021

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Crl.RC(MD)No. 692 of 2016
and Crl.M.P(MD) Nos.9685 & 9686 of 2016

Srinivasan ...Petitioner/Appellant/Sole Accused

Vs.

R. Valli ...Respondent/Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the case in C.A. No.53 of 2011 on the file of the Fast Track Mahila Court, Sivagangai and the case in STC No.454 of 2005 on the file of the Principal District Munsif cum Judicial Magistrate Court, Karaikudi and set aside the conviction and sentence passed in C.A. No.53 of 2011 on the file of the Fast Track Mahila Court, Sivagangai, dated 13.07.2016 in confirming the Judgment made in STC No.454 of 2005 on the file of the Principal District Munsif Cum Judicial Magistrate Court, Karaikudi, dated 24.11.2011 and to allow this revision.

For Petitioner : Mr.C. Jeyaprakash
For Respondent : No Appearance

O R D E R

This criminal revision case has been filed as against the concurrent findings on a complaint instituted under Section 138 of the Negotiable Instruments Act.

2. The trial Court, namely, the learned Principal District Munsif-cum- Judicial Magistrate, Karaikudi, found this petitioner guilty under Section 138 of the Negotiable Instruments Act, in S.T.C No.454 of 2005 and by order, dated 24.11.2011, convicted and sentenced to undergo imprisonment for One year and to pay a fine of Rs.1,000/-, in default, to undergo imprisonment for Two months for the offence he was stood charged. As against the conviction and sentence, the petitioner has preferred an appeal and the learned Fast Track Mahila Judge, Sivaganga, by order dated 13.07.2016 in C.A.No.53 of 2011, confirmed the conviction and



sentence imposed by the trial Court. Aggrieved over the same, the petitioner has preferred the instant revision case.

3. The case of the respondent/complainant is that the wife of the petitioner/accused borrowed a sum of Rs.2,60,000/-and in discharge of the debt had issued a cheque for Rs.3 Lakhs, dated 24.01.2005. The cheque was drawn on ICICI Bank Ltd., Karaikudi. The complainant had presented the cheque through his Bank ICICI Bank Ltd., Karaikudi and the same was returned with an endorsement 'insufficient funds'. Therefore, the complainant, after issuing a notice calling upon the petitioner/accused to make the payment as required under Clause (b) of the proviso to Section 138 of the Negotiable Instruments Act, filed the complaint, after the statutory period. Both the Courts below have found the petitioner/accused guilty and aggrieved, the petitioner has preferred the instant revision case.

4. Heard Mr.C. Jeyaprakash, learned Counsel for the petitioner/ accused. There is no representation for the respondent / complainant.

5. Mr.C. Jeyaprakash, learned Counsel for the petitioner/accused contended that the conviction and sentence of the Courts below are against law and failed to assign valid and proper reasons while convicting the petitioner herein. He further contended that the Courts below failed to consider that the statutory notice as contemplated under Section 138 of the Negotiable Instruments Act, was not issued to the petitioner/accused. He further contended that the Courts below failed to consider that the complainant had failed to prove the case beyond reasonable doubt. He further contended that the Courts below had erred in convicting the petitioner/accused only based upon presumptions and assumptions which is highly illegal and therefore, it required interference of this Court. Hence, he prays for allowing this Criminal Revision case.

6. This case has been filed by the petitioner/accused to set aside the conviction and sentence passed in C.A. No.53 of 2011 on the file of the Fast Track Mahila Court, Sivagangai, dated 13.07.2016 in confirming the Judgment made in STC No.454 of 2005 on the file of the Principal District Munsif Cum Judicial Magistrate Court, Karaikudi, dated 24.11.2011.

7. The cheque was belonged to the petitioner/accused and issuance of cheque was also not denied by the petitioner/accused, even in his notice Ex.D.1. The complainant/respondent herein had issued notice to the petitioner/accused's counsel. The ingredients of Section 138 of the Negotiable Instruments Act is very much



8. The relevant portion of the Judgment reported in **AIR 2000 SC, 954, Kusum Ingots & Alloys Ltd**, is extracted hereunder:

"(i). a person must have drawn a cheque on an account maintained by him in the bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;

(ii. That cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;

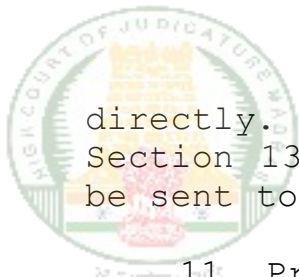
(iii) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(iv). The payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice".

9. Issuance of statutory notice to the petitioner/accused is necessary. The notice is to inform the dishonour of cheque to the accused to give an opportunity to settle the amount. Dishonour of a cheque itself constitutes the offence. But, the petitioner/accused had issued notice on 11.01.2005 which was marked as Ex.D.1. In that notice, he had pleaded that he has received only Rs.1,50,000/- only after the notice, the complainant had presented the cheque into Bank on 25.01.2005 the cheque, dated 24.01.2005. Pronote signed by the wife of the petitioner/accused. The Pronote date is 16.08.2003. As per notice, cheque was issued to her in the first week of December 2004. No specific date was mentioned. Only after issuing Ex.D.1 notice the cheque was presented to Bank. The Complainant did not send the statutory notice to the petitioner/accused. Only after Ex.D.1 notice the complainant had taken the steps to present the cheque. No reason was stated why he is waiting for two years to take steps to collect the money due from pronote.

10. Statutory notice under Section 138 (b) of Negotiable Instruments Act, is mandatory. It should be sent to drawer



directly. Whether statutory notice to counsel is valid? As per Section 138(b) of Negotiable Instruments Act, statutory notice to be sent to drawer. No other mode of service is suggested.

11. Proviso (b) Section 138 of the Negotiable Instruments Act, says that the payee or the holder in due course of the cheque as the case may be shall make a demand for the payment of the said amount of money by giving notice in writing to the drawer of cheque within 30-days from the receipt of information by him from the Bank regarding return of cheque unpaid. The provision itself makes clear that the mandatory requirement is that the drawer of cheque must be given such notice within 30 days from the date of receipt of information.

12. Here no statutory notice was issued to the drawer. Further, there is cloud on the claim that only after Ex.D.1 notice, he presented the cheque into Bank. Without any reply notice to the accused to deny the allegations against him in Ex.D.1 notice.

13. In view of the above discussions, this Criminal Revision Case is allowed and the petitioner is acquitted of the charge framed against him. Fine amount, if any paid, shall be refunded. Bail bonds, if any executed, shall stand terminated. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ksa

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 Presiding Judge, Fast Track Mahila Court,
Sivagangai.

<https://hcservices.ecourts.gov.in/hcservices/>



2. The Principal District Munsif Cum
Judicial Magistrate,
Karaikudi.

3. Do Through:
The Chief Judicial Magistrate,
Sivagangai District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

5. The Section Officer, Criminal Section(Records)-2 copies
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.C.JEYAPRAKASH, Advocate (SR-7420[F] dated
25/02/2021)

**Order made in
Crl.RC(MD)No.692 of 2016
25.02.2021**

KM (12.03.2021) 5P 8C