



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 28.04.2021

ORDER PRONOUNCED : 30 .07.2021

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CORAM :

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**
Crl.R.C. (MD) No.740 of 2017

M.Prince ... Petitioner/Appellant/Accused

vs.

M/s.Lords Saw Mill and Timbers,
through Bennet Yesudhas,
S/o.Jebamani,
22/1, Masilammal Puram 3rd Street,
Thoothukudi Taluk and Post,
Thoothukudi District. ... Respondent/Respondent/Complainant

PRAYER:- This Criminal Revision Case filed under Section 397(1) r/w 401 of the Code of Criminal Procedure, to call for the records and to set aside the judgment passed by the 2nd Additional District Sessions Court of Thoothukudi made in C.A.No.98 of 2013 dated 26.08.2015 for the offence under Section 138 of Negotiable Instruments Act, confirmed by the judgment made in C.C.No.567 of 2012 dated 17.10.2013 on the file of the Fast Track Court (Magisterial Level) Thoothukudi and acquit the petitioner.

For Petitioner : Mr.R.Manimaran
Legal Aid Counsel

For Respondent : Mr.A.Thiruvadi Kumar

ORDER

This Criminal Revision Case has been filed to call for the records and to set aside the judgment, dated 26.08.2015 passed by the learned 2nd Additional District Sessions Judge, Thoothukudi in C.A.No.98 of 2013, confirming the judgment passed in C.C.No.567 of 2012 dated 17.10.2013 on the file of the Fast Track Court (Magisterial Level) Thoothukudi.

2.The learned counsel for the petitioner filed the written arguments.

3.As per the contents made in the written arguments filed by the learned counsel for the petitioner, the respondent herein filed C.C.No.567 of 2012 before the learned Judicial Magistrate-II,

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



Thoothukudi seeking the relief of imposing maximum fine and order to pay the cheque amount of Rs.1 Crore as compensation.

4.Initially, the case was enquired by the learned Judicial Magistrate-II, Thoothukudi. Later, it was transferred to the Court of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi. The trial Court had convicted the petitioner under Section 138 of Negotiable Instrument Act and awarded the punishment of 2 years simple imprisonment and to pay Rs.1 Crore as compensation, in default, to undergo simple imprisonment for a period of 6 months. The order of conviction was passed by the trial Court on 17.10.2013.

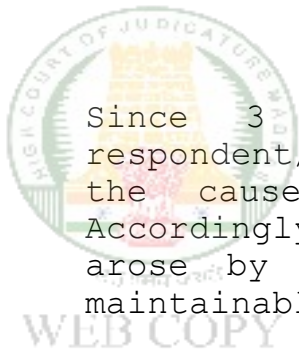
5.Aggrieved by the said order, the accused, who is the petitioner herein, had preferred an appeal in C.A.No.98 of 2013 before the 2nd Additional District Sessions Judge, Thoothukudi. After hearing the appeal, the appellate Court had confirmed the judgment of the trial Court by its order dated 26.08.2015. Against the judgment confirming the judgment of the trial Court and convicting the accused, the accused had prepared this Criminal Revision Case.

6.Originally, the trial commences by the learned Judicial Magistrate-II, Thoothukudi. On the side of the complainant, the complainant himself was examined as P.W.1 and the official of the banker was examined as P.W2 and Exs.B1 to B16 were marked. On the side of the accused, the accused himself was examined as D.W1 and another witness was examined as D.W2 and Exs.R1 to R6 were marked.

7.The trial had been completed by the competent Court. After transferring the case to the Court of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi, the witnesses should not be recalled and retrial should not be done for the change of Presiding Officer. It is clear abuse of process of proceedings adopted by the trial Court. The procedure must be followed perfectly in respect of criminal case is concerned or otherwise, the entire proceedings are deemed to be abuse process.

8.In the present case, since already the trial had been completed by the competent Court, once again retrial conducted due to the change of the learned Judge is not permitted by law. Therefore, the procedure adopted by the trial Court is null and void. The learned counsel for the petitioner invited the attention of this Court to paragraph Nos.14 and 15 of the judgment of the learned Judicial Magistrate, Fast Track Court (Magisterial Level) Thoothukudi.

9.The learned counsel for the petitioner further submitted that three cheques, Ex.P6 to Ex.P8, have been involved in the present case. Those cheques were returned by the banker and hence, the



Since 3 cheques have been returned by the banker, the respondent/complainant ought to have filed 3 separate cases because the cause of action arose independently for every cheque. Accordingly, single case is not maintainable, since cause of action arose by multiple cheques. Hence, the complaint itself is not maintainable *ab initio*.

10.Further, mere admission of signature is not sufficient to convict the person under Section 138 of Negotiable Instruments Act. The existence of debt must be proved with proper evidences and witnesses. In the present case, the debt had not been proved by the complainant without doubt. Moreover, the debt amount is different from the cheque amount. Most of the bills are not signed by the petitioner/accused out of the bills submitted by the complainant. Hence, the debt is not properly proved. Accordingly, rebut the presumption is on the side of the complainant. The complainant/respondent had not proved the debt of accused without doubt. The learned counsel for the petitioner invited the attention of this Court to page No.40-line about 4 and 5 of the typed set of papers for his arguments.

11.Ex.P12 legal notice issued by the complainant/respondent is not in accordance with Section 138(b) of Negotiable Instrument Act and it is not fulfilled the requirement of the Act. Ex.P12 is an uncompleted notice and hence, the case under Section 138 of Negotiable Instrument Act will not maintainable on the basis of Ex.P12.

12.The learned counsel for the petitioner further invited the attention of this Court to page No.40-line about 2 to 4 of the typed set of papers. It was prayed by the learned counsel by narrating all those facts that this Criminal Revision Case is liable to be allowed and the order of conviction passed by the learned 2nd Additional District Sessions Judge, Thoothukudi in C.A.No.98 of 2013 dated 26.08.2015, confirming the judgment made in C.C.No.567 of 2012 dated 17.10.2013 passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi, is liable to be set aside and the petitioner is to be acquitted.

13.On perusal of the records, it is seen that the respondent/complainant had not filed written arguments.

14.This case was posted for hearing on 22.04.2021 with a direction to the both side counsels that they have to furnish their written arguments by 28.04.2021, failing which, appropriate orders will be passed by this Court. Accordingly, the petitioner alone had filed the written arguments and the respondent had not filed the written arguments.

15.The point for consideration is whether this Criminal Revision Case is to be allowed and the judgment passed by the



learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi in C.C.No.567 of 2012 dated 17.10.2013, which was confirmed by the learned 2nd Additional District Sessions Judge, Thoothukudi in C.A.No.98 of 2013 dated 26.08.2015, is to be set aside.

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16. Case records perused.

17. On perusal of the case records, it is found that the complainant had proved his case beyond any doubt. The learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi, had considered the relevant materials, which are available before her, while considering the judgment.

18. In the cases under Section 138 of Negotiable Instrument Act, the presumption under the Negotiable Instrument Act is to be considered by the competent Court. The learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi had properly appreciated the evidence, which were available before her and analyzed the evidence, as per the provisions of the Indian Evidence Act regarding oral and documentary evidences. Also, the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi had assessed the evidence, in the light of Sections 118, 138, 139 and 142 of Negotiable Instrument Act.

19. In the judgment, the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi, had clearly discussed the arguments of the learned counsel for the accused that the trial Court ought not to have considered or order for new trial and should have considered the evidence, which are available already before the earlier Magistrate.

20. When the case was up to the evidence of D.W2, for which, the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi had observed that the accused had obtained orders from the Court seeking transfer of trial to the Court of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi and also for *de novo* trial, by his own conduct, the accused is estopped from taking an alternate plea that the new trial could not have been proceeded.

21. The learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi had considered the evidence that was available before her during trial after the case was transferred from the Court of the learned Judicial Magistrate-II, Thoothukudi to her. What was recorded before the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi alone had also been considered by her. All the defence except the arguments of the learned counsel for the accused that new trial ought not to have been conducted alone were considered and the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi had



elaborately discussed about the defence of the accused in paragraph Nos.17 to 21 of the judgment dated 17.10.2013.

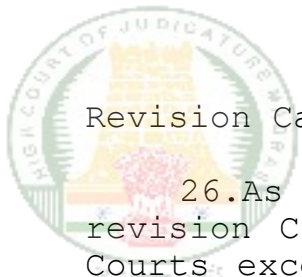
22. Apart from that the defence of the accused was discussed in paragraph Nos.32 to 35 of the said judgment. The learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi had properly appreciated the evidence available before her and arrived at a conclusion that the case of the complainant had been proved against the accused. Therefore, as per Section 138 of Negotiable Instrument Act, the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi had pronounced the judgment convicting the accused and sentencing him to undergo simple imprisonment for a period of 2 years and to pay a fine of Rs.1 Crore, in default, to undergo simple imprisonment for a period of 6 months.

23. When the appeal was filed before the learned 2nd Additional District Sessions Judge, Thoothukudi and the case was taken up for consideration, the learned counsel for the respondent/complainant had furnished his written arguments, wherein, the learned counsel for the respondent had placed reliance on the following rulings of the Hon'ble Supreme Court as well as this Court in favour of the complainant.

- i) I.C.D.S. Ltd Vs. Beena Shabeer and another
- ii) M.Vairavan Vs. T.M.Selvraj
- iii) C.V.Alexander Vs. Joseph Chacko
- iv) Gummadi Industries Limited Vs. Khushroo F.Engineer
- v) A.Sakthivel Vs. K.R.Navaneetha Krishnan

24. The learned 2nd Additional District Sessions Judge, Thoothukudi, had considered the arguments put forth by the learned counsel for the appellant/accused and in the light of reasoning and the reported rulings of the Hon'ble Supreme Court as well as various High Courts relied on by the learned counsel for the respondent/complainant, the arguments of the learned counsel for the appellant/accused was rejected by the learned 2nd Additional District Sessions Judge, Thoothukudi and the appeal was dismissed, vide judgment dated 26.08.2015. Against which, the present Criminal Revision Case had been filed, after filing the petition to condone the delay of 605 days. The delay of 605 days was condoned by the then learned Single Judge of this Court, vide order dated 15.09.2017.

25. The accused, who is the petitioner herein, instead of paying the compensation amount had appeared before this Court after the dismissal of the appeal dated 26.08.2015 and had cleverly protracted the proceedings and escaped from his sentence and the sentence of imprisonment was postponed. The very same grounds, which had been agitated before the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi, had been adopted in the appeal. The appeal was dismissed. The very same defence is taken in this



Revision Case also.

26.As per the rules applicable to the revision cases, the revision Court shall not interfere with the findings of the trial Courts except when there is a perverse finding. Here, nothing is found perverse on perusal of the judgment of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi and the learned 2nd Additional District Sessions Judge, Thoothukudi. The claim of the petitioner/accused that the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi ought not to have proceeded with the *de novo* trial is itself not acceptable, considering the fact that the petitioner/accused alone sought transfer of the case from the Court of the learned Judicial Magistrate-II, Thoothukudi to the Court of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi and seek *de novo* trial. Therefore, the conduct of the petitioner/accused is hit by Section 115 of the Indian Evidence Act.

27.The learned 2nd Additional District Sessions Judge, Thoothukudi, in his judgment had adverted to the defence of the accused, questioning the *de novo* trial. The learned 2nd Additional District Sessions Judge, Thoothukudi had discussed that if there is any objection for *de novo* trial, the accused can approach this Court and obtain appropriate orders from this Court by way of filing the revision case.

28.Since the accused had not done the same and allowed to conduct the trial afresh in the Court of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi till the stage of 313 (1) Cr.P.C., proceedings, he cannot question the judgment of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi, after transferring the case from the Court of the learned Judicial Magistrate-II, Thoothukudi, where, the case was part heard at the stage of D.W2 evidence, to the Court of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi.

29.The observation made by the learned 2nd Additional District Sessions Judge, Thoothukudi regarding the same in his judgment at paragraph No.15 is acceptable. Therefore, the reasoning by the trial Judge rejecting the contention in the trial is also found reasonable.

30.The legal point that was discussed by the learned 2nd Additional District Sessions Judge, Thoothukudi without questioning the proceeding before the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi by the accused in the higher forum and cooperating with the Court for the smooth trial till the stage of 313 (1) Cr.P.C., and seeking to question the same after the conclusion of the trial, is not acceptable. The same rule applies



in this Revision Case also.

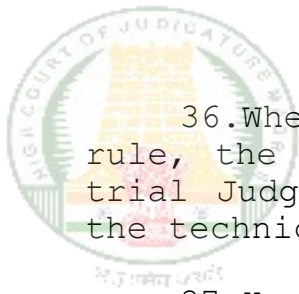
31.The contention of the learned counsel for the petitioner regarding existence of debt to be proved by proper evidence and witness and regarding the payment by the accused to the complainant had been discussed in paragraph No.13 of the judgment passed by the learned 2nd Additional District Sessions Judge, Thoothukudi.

32.The learned 2nd Additional District Sessions Judge, Thoothukudi had replied to the defence of the accused for the amount that is outstanding with the complainant that some others had taken credit for the goods purchased, for which, the accused had been rejected by the learned 2nd Additional District Sessions Judge, Thoothukudi on the ground that the points had been discussed by the learned trial Judge that it is for the customers, for whom, the accused had purchased the goods from the complainant and the bills are in the name of his clients, who were introduced to the complainant. The presumption in favour of the complainant is born out of the documents regarding business transaction between the complainant and the accused over a period of years. Therefore, the contention also is negative in this Revision Case.

33.When the petitioner is taking the very same ground before the revision Court, it amounts to mislead the Court. From the perusal of the materials available before this Court the judgment of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi and the judgment of the learned 2nd Additional District Sessions Judge, Thoothukudi, it is found that the contentions raised in this Revision Case cannot at all be accepted.

34.There are no grounds to interfere with the judgment of the learned trial Court as well as the learned appellate Court considering the fact that the facts and law had been properly applied by the trial Court as well as the appellate Court. Nothing is found perverse either in the judgment of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi or in the judgment of the learned 2nd Additional District Sessions Judge, Thoothukudi.

35.The Hon'ble Supreme Court had laid down the rules that if the trial Judge had arrived at a finding based on the proper appreciation of evidence and the Indian Evidence Act and on the same set of evidence, if the learned appellate Judge comes to a different conclusion, still the appellate Judge shall not disturb the findings of the learned trial Judge as the findings of the trial Judge is the proper appreciation of evidence. That is because the learned trial Judge has the advantage of appreciating the demeanor of the witnesses, which benefit is not available to the appellate Court.



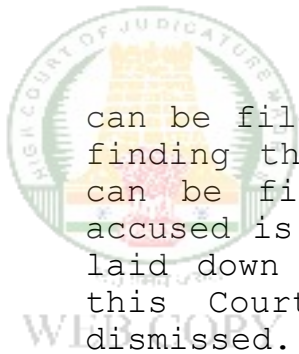
36. When the appellate Court itself is restricted by the said rule, the revision Court cannot interfere with the findings of the trial Judge or with the appellate Judge. The revision is based on the technicalities of law.

37. Having list before the trial Court and the appellate Court and exhausted the remedies, the accused after the delay of 605 days had approached the revision Court only to protract the proceedings. He had cleverly protracted the proceedings from 2015 by delaying to file this Revision Case till 2017. After 2017, till the case had been taken up for hearing on priority basis in the year 2021, the accused had cleverly avoided the payment of compensation and escaped from the imprisonment of 2 years. There is no merit in the contentions of the learned counsel for the petitioner.

38. When the accused himself had sought retrial, *de novo* trial, after transferring the case from the Court of the learned Judicial Magistrate-II, Thoothukudi at the stage of D.W2 evidence, after properly conducting the *de novo* trial and after the conclusion of the trial, the learned Judicial Magistrate had arrived at the finding. The claim of the accused before the revision Court that the revision Court is to consider the evidence that was in his favour at the earlier trial cannot at all be considered. Once the *de novo* trial is ordered, the trial Court shall consider the evidence available only before the new trial.

39. The only intention of the accused is to defeat the purpose of enacting Section 138 of Negotiable Instruments Act, which is a great benefit to the persons involving in trade and commerce. The accused is a Trader and the complainant is also a Trader. In the course of trade and business, the goods were transferred on credit. The petitioner is a business man, who is purchasing the wood logs from the complainant and distributing it to his clients in various parts of the State particularly, Chennai, Thiruvannamalai and Viluppuram. He is also in the same business receiving the cheques for the business transaction. If the clients had not paid, he can take similar steps for recovery of money from his clients. Instead, he is agitating and disputing the claim made by the complainant even after the Court had rejected the defence to be put up by the accused. The learned trial Judge had exhaustively discussed the evidence in support of the accused regarding payment of the amount three cheques by the accused for the goods that he had purchased over a period of time.

40. The contention of the petitioner that the complaint had been filed for 3 cheque transactions as a single complaint also cannot be accepted. By his defence, the petitioner is seeking three different complaints so that he can protract the proceedings for each and every transactions. That cannot be the case. The Hon'ble Supreme Court had held that for a series of transaction, a single complaint



can be filed. The High Court of Madras had also given the very same finding that for series of cheque transaction, a single complaint can be filed by the complainant. Therefore, the defence of the accused is again established the legal procedures and rules that are laid down by the rulings of the Hon'ble Supreme Court as well as this Court. This revision lacks merit and accordingly, it is dismissed. The point for consideration is answered in favour of the respondent and against the petitioner.

41.In the result, This Criminal Revision Case is dismissed as having no merits. The petitioner/accused is directed to surrender before the Court of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi, within a period of one month from the date of receipt of a copy of this order.

42.This order is to be communicated through email to the learned counsels, who appeared on behalf of the petitioner/accused as well as the respondent/complainant in this case. A copy of this order is to be forwarded to the learned Principal District Judge, Thoothukudi, Additional District Judge, Thoothukudi and the learned Chief Judicial Magistrate, Thoothukudi.

43.The learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thoothukudi, is directed to issue warrant and execute the warrant against the petitioner. The learned Chief Judicial Magistrate, Thoothukudi, is directed to address the police officials concerned in executing the warrant of arrest against the petitioner to undergo the imprisonment of 2 years in the cheque case based upon the private complaint. The Commissioner or the Superintendent of Police, Thoothukudi may be directed to assist the Court in executing the warrant to sentence the accused.

Sd/-

Assistant Registrar(AE)

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Sub Assistant Registrar(CS)

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To

1.The Principal District Judge, Thoothukudi.

2.The Additional District Judge, Thoothukudi.

3.The Chief Judicial Magistrate, Thoothukudi.

4.The Judicial Magistrate,
Fast Track Court(Magisterial Level), Thoothukudi.



5.The 2nd Additional District Sessions Judge,
Thoothukudi.

6.The Commissioner of Police,
Thoothukudi District, Thoothukudi.

7.The Superintendent of Police,
Thoothukudi District, Thoothukudi.

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

+1 CC to M/s.A.THIRUVADI KUMAR, Advocate (SR-24621[F] dated
30/07/2021)

Crl.R.C. (MD) No.740 of 2017
30.07.2021

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