



Crl.RC.No.194 of 2020

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G.K.ILANTHIRAIYAN, J.

At the instance of the learned counsel for the petitioner, today this matter has been posted under the caption “for being mentioned”.

2. The learned counsel for the petitioner would submit that while disposing of the revision in Crl.RC.No.194 of 2020 dated 01.12.2022 by this Court, due to inadvertence, it was mentioned to deposit the entire cheque amount on or before 23.12.2022. Further, the cheque amount has been mentioned as Rs.15,50,000/- instead of Rs.17,50,000/-. Hence, he requested to issue a fresh order copy after correcting the same.

3. Heard, the learned counsel for the petitioner.

4. In view of the submissions of the learned counsel for the petitioner, it is ordered that the following corrections shall be made in the order passed in Crl.RC.No.194 of 2020 dated 01.12.2022.



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(i) In the ninth paragraph of the order, in the fifteenth line,
“Rs.15,50,000/-” shall read as **“Rs.17,50,000/-”**.

(ii) In the twelfth paragraph of the order, in the last line,
“23.12.2022” shall read as **“23.01.2023”**.

5. Accordingly, the Registry is directed to issue a fresh order copy in
Crl.RC.No.194 of 2020 dated 01.12.2022 after making necessary corrections.

13.12.2022

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Note: Issue order copy on 14.12.2022



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.194 of 2020

V.Mathi Amuthan

...Petitioner

-Vs-

N.Gunanithi

... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w Section 401 of Code of Criminal Procedure, to set aside the order dated 27.11.2019 in C.A.No.112 of 2018 passed by the learned II Additional District and Sessions Judge, Thiruvallur at Poonamallee, confirming the order of conviction and sentence dated 14.06.2018 passed as against the Revision petitioner by the learned Judicial Magistrate (Fast Track Court), Poonamallee, Thiruvallur District in S.T.C.No.143 of 2015.

Velayutham,

For Petitioner :

Mr.S.Shanmuga

Senior Counsel



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For Respondent : Mr.R.Sasikumar

ORDER

This revision is directed as against the judgment passed in C.A.No.112 of 2018 dated 27.11.2019 on the file of the II Additional District and Sessions Judge, Thiruvallur, Poonamallee, thereby confirming the judgment passed in S.T.C.No.143 of 2015 dated 14.06.2018 on the file of the Judicial Magistrate (Fast Track Court), Poonamallee, Thiruvallur District, thereby convicting the petitioner for the offence under Section 138 of Negotiable Instruments Act.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence under Section 138 of Negotiable Instruments Act.

3. The case of the respondent is that the complainant and the accused were partners in real Estate business. They entered into an agreement with one V.V.Sekaran to purchase immovable properties totalling an extent of 25237 Sq.ft, comprised in Survey Nos.594/1, 595/1 and 595/3 situated at 'Arcot City' layout, Arcot Town, Vellore District. The total sale consideration was fixed at



Rs.41,64,105/- and the complainant paid Rs.10 lakhs as an advance. However,

the said V.V.Sekaran failed to come forward to execute any sale deed on receipt of the balance sale consideration. Therefore, both approached him. Thereafter, without the knowledge of the complainant, the accused alone approached him and obtained Power of Attorney in his favour in respect of the above said properties. Thereafter, he started selling the house plots. After the complainant came to know about the said fact, when the complainant approached the petitioner, he assured to return back the complainant's money either by way of plots or by way of equivalent cash. He had executed a deed of assurance on 15.06.2013 and he also issued a post-dated cheque on 15.08.2013 for a sum of Rs.17,50,000/- in order to discharge the legally enforceable debt. When the said cheque was presented for collection and the same was returned for the reason “funds insufficient”. After causing statutory notice to the petitioner, the respondent lodged a complaint.

4. In order to prove his case, the respondent had examined PW1 and Exs.P1 to 6 were marked and on the side of the accused Dws1 and 2 were



examined and Exs.D1 to 7 were marked.

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5. On perusal of oral and documentary evidence, the trial Court found the petitioner guilty for the offence under section 138 of NI Act and sentenced him to undergo 24 months simple imprisonment and also awarded compensation of cheque amount payable by the petitioner to the respondent in default, to undergo four weeks simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed confirming the judgment passed by the trial Court. Hence this revision.

6. Mr.S.Shanmuga Velayutham, the learned Senior Counsel appearing for the petitioner would submit that even before execution of alleged deed of assurance, which was marked as Ex.P5, the petitioner caused legal notice which was marked as Ex.P3 on 12.06.2013, in which, he called upon the respondent to return back the cheques within a period of seven days since there was no legally enforceable debt on the part of the petitioner. However, both the Courts below, without considering the said document dated 12.06.2013,



mechanically convicted the petitioner for the offence under Section 138 of NI Act.

7. However, he would further submit that if this Court is not convinced with Ex.D3, the petitioner is ready and willing to pay the cheque amount within a period of eight weeks. The learned counsel for the respondent also agreed to receive the cheque amount and has no objection to set aside the conviction on payment of the cheque amount.

8. Heard the learned counsel on either side and perused the materials available on record.

9. It is seen that the petitioner and the respondent had entered into an agreement for sale with one V.V.Sekaran in respect of the subject property and the respondent paid a sum of Rs.10 lakhs as an advance. However, without knowledge of the respondent, the petitioner alone obtained Power of Attorney in his favour from the said V.V.Sekaran. On the strength of the Power of



Attorney, the petitioner started selling the house plots and only thereafter, the respondent came to understand and approached him. Therefore, the petitioner executed a deed of assurance on 15.06.2013 which was marked as Ex.P5 and it revealed that the petitioner assured to register the house plots in favour of the respondent or its cost will be paid to the respondent. On the strength of the deed of assurance, the petitioner issued cheque which was marked as Ex.P1 for a sum of Rs.15,50,000/-. However, it was not cleared by him and returned for the reason “funds insufficient”. The respondent caused statutory notice to the petitioner which was marked as Ex.P2 and it was duly received by the petitioner. However, the petitioner failed to reply to rebut the presumption arising out of Section 138 of NI Act.

10. Though, the learned Senior Counsel vehemently contended about Ex.P3, the petitioner failed to produce any acknowledgement for the said legal notice to show that it was served on the respondent or not. It is seen that the said notice was filed only to escape from the clutches of law and nothing else. Therefore, the respondent discharged his initial burden arising out of Section



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138 of NI Act and the petitioner failed to rebut the same. Therefore, both the Courts below rightly convicted the petitioner for the offence under Section 138 of NI Act and this Court finds no illegality or infirmity in the order passed by the Courts below. Accordingly, the criminal revision stands dismissed.

11. However, the learned Senior Counsel submitted that the petitioner is ready and willing to settle the cheque amount within a period of eight weeks and he prays to set aside the conviction. The learned counsel for the respondent also submitted that the respondent is ready and willing to receive the cheque amount.

12. Considering the above submissions, the judgment dated 27.11.2019 passed in C.A.No.112 of 2018 on the file of the II Additional District and Sessions Judge, Thiruvallur, Poonamallee, thereby, confirming the judgment dated 14.06.2018 passed in S.T.C.No.143 of 2015 on the file of the Judicial Magistrate (Fast Track Court), Poonamallee, Thiruvallur District, is hereby set aside on condition that the petitioner shall deposit the entire cheque



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amount namely Rs.17,50,000/- to the credit of trial Court, on or before
23.12.2022.

13. If the petitioner failed to comply with the aforesaid condition, the conviction and sentence imposed by the Courts below shall stand automatically restored. On such deposit, the respondent is permitted to withdraw the same by way of filing an appropriate application. It is made clear that the trial Court is directed to permit the respondent to withdraw the said amount without ordering any notice to the petitioner.

01.12.2022

Index : Yes/No
Speaking/Non Speaking order
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Note : Issue order copy on 08.12.2022.

To

1. The II Additional District and Sessions Judge,
Poonamallee, Thiruvallur.

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2. The Judicial Magistrate (Fast Track Court),
Poonamallee, Thiruvallur.

3. The Public Prosecutor,
Madras High Court, Chennai.

G.K.ILANTHIRAIYAN. J.

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