IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

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

Crl.R.C.No.1005 of 2018

S.Nagarajan ... Petitioner

Vs.

B.Ramasamy ... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set aside the order passed in Crl.A.No.89 of 2016 dated 06.07.2018 on the file of the learned Principal Sessions Judge, Tiruvallur confirming the order of conviction and sentence imposed on the petitioner passed in S.T.C.No.25 of 2016 dated 23.11.2016 on the file of the learned Judicial Magistrate, Fast Track Court (Magistrate level), Tiruvallur.

For Petitioner : Mr.T.Ganesan
For Respondent : Mr.C.K.M.Appaji

ORDER

This Criminal Revision is directed as against the judgment passed in Crl.A.No.89 of 2016 dated 06.07.2018 on the file of the learned Principal Sessions Judge, Tiruvallur, confirming the order passed in

S.T.C.No.25 of 2016 dated 23.11.2016 on the file of the learned Judicial Magistrate, Fast Track Court (Magistrate level), Tiruvallur, thereby convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act (herein after referred to as "the NI Act")

2. The petitioner is an accused in the complaint lodged by the respondent. The case of the respondent is that the petitioner borrowed a sum of Rs.2,00,000/- with a promise to pay the amount with interest at the rate of 2% per month. The petitioner also created security in respect of his property comprised in Survey No.301/1 situated at Door No.11, Ambedkar Street, Periyar Nagar, Thiruninravur, Thiruvallur District. Again on 05.12.2011, the petitioner borrowed a sum of Rs.1,50,000/- from the respondent agreeing to repay the same on demand with an interest at the rate of 2% per month.

3. In order to repay the same, the petitioner was issued two cheques for a sum of Rs.1,00,000/- each, towards partial discharge of the borrowed amount. Both the cheques were presented for collection and the

same were returned dishonoured with endorsement funds insufficient. After causing legal notice, the respondent lodged the present complaint and same has been taken cognizance in S.T.C.No.25 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Thiruvallur.

4. On the side of the respondent, he examined P.W.1 & P.W.2 and also marked documents in Ex.P.1 to Ex.P.11. On the side of the petitioner, no one was examined and no document was marked. On a perusal of the oral and documentary evidence, the trial Court found the guilt of the petitioner and sentenced him to undergo simple imprisonment for a period of eight months and awarded compensation of Rs.2,00,000/- under Section 357(3) of Cr.P.C., in default to undergo simple imprisonment for a period of two months. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed by confirming the order passed by the trial Court. Hence, the petitioner filed this present revision.

5. The learned counsel appearing for the petitioner raised the

ground that the alleged cheques were issued on 04.12.2014. After 01.04.2012, there was a fresh guideline issued by the Reserve Bank of India that the cheques are valid up to only three months from the date of the issuance of the cheque. Accordingly, the respondent ought to have presented the cheques within a period of three months viz., on or before 03.03.2015. Whereas, the respondent admittedly presented the cheques on 04.03.2015 and the same were returned dishonoured for the reason that insufficient funds.

5.1. He further submitted that P.W.2, the manager of the bank categorically deposed that the alleged cheques were ought to have returned on the ground that the cheques were out-dated instead of insufficient fund. Further on the date on which the cheques were issued to be calculated for arriving 90 days. Therefore, the respondent ought to have presented the cheques on or before 03.03.2015. Without considering the facts and circumstances, both the Courts below convicted the petitioner. Therefore, he prayed to allow the present revision.

6. Per contra, the learned counsel appearing for the respondent

submitted that the only ground raised by the petitioner is that the cheques were not presented on time. However, the date on which the cheques were issued should be excluded and therefore, the respondent presented the cheques well within the time. Therefore, both the Courts below rightly convicted the petitioner and the interference of this Court does not warrant in the present case. To support his contention, he relied upon the judgment reported in ***(2014) 11 SCC 759*** in the case of ***Rameshchandra Ambalal Joshi Vs. State of Gujarat and anr*** and prayed to dismiss the present revision.

7. Heard Mr.T.Ganesan, learned counsel appearing for the petitioner and Mr.C.K.M.Appaji, learned counsel appearing for the respondent.

8. On a perusal of records revealed that the respondent was examined himself as P.W.1 and the bank manager was examined as P.W.2. The petitioner borrowed a sum of Rs.2,00,000/- and in order to repay the same, he issued two cheques dated 04.12.2014. Both the cheques were

presented for collection on 04.03.2015 and the same were returned dishonoured for the reason that funds insufficient on the same day, since the petitioner and the respondent were holding accounts on the same bank. Therefore, after causing statutory notice, the respondent lodged the present complaint. The petitioner duly received the statutory notice and failed to reply by way of reply notice. The petitioner also failed to examine any witness to rebut the presumption under Section 138 of the NI Act.

9. The only point for consideration is that whether Ex.P4 and Ex.P.5 were presented within a period of three months or not?

10. Admittedly, the cheques were issued on 04.12.2014. Even at the time of issuance of cheques the validity for the cheque was three months. As per the amended guidelines issued by the Reserve Bank of India, the validity of the cheque was reduced to three months with effect from 01.04.2012. Therefore, the cheques ought to have been presented for collection within a period of three months.

11. In the case on hand, Ex.P.4 and Ex.P.5 were presented for collection on 04.03.2015. On the same day both the cheques were returned

dishonoured for the reason that funds insufficient. In this regard, the learned counsel appearing for the respondent relied upon the judgment reported in ***(2014) 11 SCC 759*** in the case of ***Rameshchandra Ambalal Joshi Vs. State of Gujarat and anr*** in which, the Hon'ble Supreme Court of India held that limitation period under Section 138 Proviso (a) means six calendar months as per British Calendar (As per Section 3(35) General Clauses Act, 1871) "month" does not mean just a period of 30 days as suggested by the accused and the said period would commence from the day next when the cheque was drawn and will expire the day prior to the corresponding day of the corresponding month and in case no such day falls in the corresponding month, the said period would expire at the end of the last day of the immediately previous month. The relevant paragraph reads as follows :-

> *13. The next question which calls for our answer is the date from which the six months' period would commence. In case of ambiguity with reference to the date of commencement, Section 5 of the General Clauses Act, can be pressed into service and the same reads as follows :-*
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> *"9.Commencement and termination of time :- (1)*

In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from' and for the purpose of including the last in a series of days or any other period of time, to use the word 'to'."

12. Thus it is clear that the period would commence from the day when the cheque was drawn and will expire a day prior to the corresponding day of the corresponding month and in case no such day falls in the corresponding month, the said period would expire at the end of the last day of the immediately previous month. Therefore, the date on which the cheque was issued has to be excluded and the alleged cheques viz., Ex.P.4 and Ex.P.5 were presented for collection within a period of three months. Therefore, the Courts below rightly convicted the petitioner and this Court finds no infirmity or illegality in the order passed by the Courts below.

13. Accordingly, the Criminal Revision stands dismissed. The judgments of conviction and sentence passed by the Courts below are

hereby confirmed. The trial Court is directed to take steps to secure the petitioner for the purpose of sentencing him to undergo the remaining period of conviction. It is also directed that the period of sentence already undergone by the petitioner, if any, shall be given set off, as required under Section 428 Cr.P.C.

17.10.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order

rts

G.K.ILANTHIRAIYAN, J

rts

To

1. The Principal Sessions Judge,
   Tiruvallur

2. The Judicial Magistrate,
   Fast Track Court (Magistrate level),
   Tiruvallur.

Crl.R.C.No.1005 of 2018

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