



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.R.C.NO.24 OF 2015

AND

M.P.NO.1 OF 2015

Sakthivel
S/o Arjunan

...Petitioner

Vs.

Dhandapani
S/o.Rajaram

...Respondent

Prayer : Revision petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the conviction and sentence made in Criminal Appeal No.129 of 2012 dated 21.10.2012 on the file of the I Additional District and Sessions Judge, Coimbatore in confirming the judgment made in C.C.No.25 of 2010 dated 15.02.2012 on the file of the learned Judicial Magistrate No.II, Coimbatore.

For Petitioner : Mr.Sasikumar
Legal Aid Counsel

For Respondent : No appearance

O R D E R

(The case has been heard through video conferencing)

This Criminal Revision Case No.24 of 2015 is filed by the petitioner / accused, aggrieved by the judgment of the learned Judicial Magistrate No.II, Coimbatore, in C.C.No.25 of 2010 dated 15.02.2012, thereby convicting him for the offence u/s.138 of the Negotiable Instruments Act (hereinafter called as N.I. Act) and imposing the sentence of one (1) year Simple Imprisonment and a fine of Rs.5,000/- and in default of payment of fine, undergo another three months Simple Imprisonment and the judgment of the learned I Additional District and Sessions Judge, Coimbatore in Criminal Appeal No.129 of 2012 dated 21.09.2012, thereby confirming the conviction and sentence imposed by the trial Court.



2. This is a case instituted by way of a private complaint u/s.200 Cr.P.C. by the complainant viz. Dhandapani, complaining about the offence u/s.138 N.I. Act. The case of the complainant is that the petitioner / accused was the landlord in respect of a shop and the complainant was to be allotted a shopping space in the commercial complex for rent and for that purpose advance amount was fixed at Rs.1,25,000/- and monthly rent was fixed at Rs.3,000/- and the complainant paid the said advance amount of Rs.1,25,000/- on 11.05.2007. However, as promised, the petitioner / accused did not let out the shop and therefore in return of the said sum of Rs.1,25,000/-, the petitioner / accused issued two cheques for a sum of Rs.70,000/- and Rs.55,000/- respectively on 13.08.2007. When the said cheques were presented for collection, they were dishonoured with an endorsement "funds insufficient" and therefore, after issuance of statutory notice, since, the petitioner / accused failed and omitted to pay the amount due under the cheques, the private complaint is filed, for the offence u/s.138 N.I. Act.

3. Learned Judicial Magistrate after recording the sworn statement of the complainant, took the complaint on file in C.C.No.25 of 2010 and after issuance of summons and furnishing of copies u/s.207 Cr.P.C. the accused denied the charges and stood trial. The complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P6 on his behalf. During the cross examination of the complainant Ex.D1 was marked on behalf of the accused. After the complainant side evidence was closed, the accused was questioned about the incriminating evidence and adverse circumstances on record as per Section 313 Cr.P.C. and the accused denied the same as false. Thereafter, since no further oral or documentary evidence was let in on behalf of the accused, the trial Court proceeded to hear the learned counsel for the complainant as well as the accused. By judgment dated 15.02.2012, the trial Court found that the defence of the accused is that after filing of the case, the complainant and the accused entered into a compromise by virtue of Ex.D1, and the complainant has undertaken to withdraw the case and therefore the prosecution must fail, but, however, when Ex.D1 was put to the complainant when he was in the box, the complainant admitted that there is compromise pending the case, thereby under Ex.D1 instead of money, the petitioner / accused had undertaken to execute a sale deed of 2 ½ cents land belonging to him and however when the complainant went to register the said 2 ½ cents, it was found by him that the said land was a poromboke land and it did not belong to the petitioner / accused and therefore there was no registration and the petitioner / accused did not also pay the money and therefore he continued the prosecution. Since Ex.D1 itself admits the entire liability, the trial Court returned the verdict of guilt and sentenced the petitioner / accused as above.



4. Aggrieved by the same, the petitioner / accused filed C.A.No.129 of 2012 on the file of the I Additional District and Sessions Judge, Coimbatore. By judgment dated 21.09.2012, after independently appraising the evidence on record, the Lower Appellate Court also considered Ex.D1 and as well as the evidence of P.W.1 and found that since the sale transaction did not go through, since the land was found to be poromboke piece of land, his liability is admitted. Therefore, the lower Appellate Court confirmed the conviction and sentence as imposed by the trial Court. Aggrieved by the same, the present Revision is filed before this Court.

5. Heard Mr.Sasikumar, the Legal Aid counsel appearing on behalf of the petitioner. Even though notice is served on the respondent / complainant, there is no appearance on behalf of the complainant and his name is also printed in the cause list and the matter is taken up for final disposal.

6. It is the statement of the learned counsel for the petitioner / accused that the sale agreement between the petitioner / accused and the respondent / complainant did not go through. The petitioner / accused did not have money to immediately repay the advance. Therefore, he issued the subject cheques as by way of security and undertook to let out the property to 3rd party and after collecting the advance amount from them, he wanted to pay the petitioner. In this regard, after obtaining cheques, the respondent / complainant kept the keys with him, thereby prevented the accused from letting out the shop to third parties. So long as the complainant has kept the keys with him, there was no legal liability to return the advance amount. This apart, the petitioner / accused also attempted to settle the issue amicably by offering to sell the land belonging to him. After entering into an agreement, the complainant willfully by falsely alleging that the land is a poromboke land, did not complete the sale and therefore in view of the matter, there was no legal liability for the petitioner / accused to discharge the amounts due under the cheques and the trial Court and the I Appellate Court, however overlooked these aspects while convicting the petitioner / accused.

7. I have considered the submissions made on behalf of the learned counsel for the petitioner. I have gone through the material records in the case. On a careful perusal of the cross examination of P.W.1 as well as Ex.D1, the agreement, it is clear that the entire transactions of the complaint, that is, paying the advance amount and the petitioner / accused's liability to repay the same are admitted. As a matter of fact, when the sale transaction as per Ex.D1 did not go through, the complainant had every right to continue the criminal case filed by him in the present proceedings for dishonour of cheques and



so long as the amount remained not paid, the complainant shall continue the prosecution. Therefore, there was clear cut legal liability to pay the advance amount of Rs.1,25,000/- and therefore, this is a clear case where the petitioner / accused has committed the offence u/s.138 N.I. Act.

8. This Revision is devoid of any merits and is accordingly dismissed, confirming the conviction and sentence imposed by the trial Court.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

kas

To

1.The Judicial Magistrate No.II,
Coimbatore.

2.The I Additional District and Sessions Judge,
Coimbatore.

3.The Public Prosecutor
High Court of Madras.

Cr1.R.C.No.24 of 2015

SPD(CO)
RVM(14/02/2022)