



WEB COPY



Crl.R.C.No.1646 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:31.10.2022

CORAM:

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.1646 of 2016 and
Crl.M.P.Nos.13588 and 13589 of 2016

Jacob Stephen

... Petitioner

Vs.

S.Sankar

... Respondent

Prayer: Criminal Revision is filed under Section 397 r/w 401 of Cr.P.C. against the judgment in C.A. No.2 of 2015 dated 19.10.2016 on the file of the Additional District Judge (FTC) of Vellore District, confirming the judgment in C.C. No.151 of 2013 dated 02.09.2014 on the file of the Fast Track Court, Judicial Magistrate, Vellore No.4.

For Petitioner : Mr.P.Chandrasekar

For Respondent : No appearance

ORDER

This revision petition has been filed by the petitioner against the concurrent findings of the Courts below in a criminal complaint filed under Section 138 of the Negotiable Instruments Act.



Crl.R.C.No.1646 of 2016

2. According to the complainant, he and the petitioner/accused were classmates and known to each other for more than 15 years. When the accused sought for financial assistance, he lent Rs.3,00,000/- against a Promissory Note on 30.04.2013. When the complainant demanded money back, the accused gave a cheque dated 17.06.2013 for Rs.3,00,000/- drawn in favour of the complainant. However, on presentation of the cheque for collection, the same was returned as 'funds insufficient'. A Statutory Notice dated 21.06.2013 was issued to the petitioner/accused both to his residential address and business premises. The notice was duly served on 22.06.2013. However, the accused neither replied nor paid the cheque amount. Hence, the complaint.

3. To substantiate the complaint, the complainant was examined as P.W.1 and 4 Exhibits were marked, viz. the cheque, return memo, statutory notice and postal acknowledgment cards. To rebut the presumption, the petitioner/accused neither examined witness nor produced any document.



Crl.R.C.No.1646 of 2016

4.The Court below after considering the evidence held that the accused has not denied the signature, the date and amount found in the cheque/Ex.P1 and he has not denied about the return of cheque for want of fund and the receipt of statutory notice and therefore, the presumption under Section 138 of Negotiable Instruments Act gets attracted. Accordingly, the absence of proof in contrary and the presumption of liability been wrong and convicted for offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo one year Simple Imprisonment and Rs.3,000/- of fine and in addition Rs.3,00,000/- being the cheque amount ordered to be paid as compensation within three months and in default to undergo two months Simple Imprisonment. Aggrieved by the conviction and sentence, the accused preferred a Criminal Appeal No.2115 of 2014 before the Sessions Judge, Vellore.

5.After appreciating the evidence, the Lower Appellate Court found no error in the Trial Court judgment and therefore, confirmed the same by dismissing the Appeal. By way of revision, the accused sought for reversal of the concurrent findings on the ground that the



Crl.R.C.No.1646 of 2016

complainant though admits that loan was advanced on promissory note, the said promissory note has not seen the light of the day.

6.The learned counsel for the petitioner submitted that the day book and ledgers maintained in the normal course of business were not produced to show that the petitioner borrowed Rs.3,00,000/- from the respondent. Though he admitted that he is an Income Tax Assessee, the complainant has not filed his income tax return which will reflect money transaction to the petitioner. The failure to substantiate the fundamental fact of borrowing has not been taken mere note of by the Courts below and thereby, grave error and miscarriage of justice have been occurred.

7.In support of his submissions, learned counsel for the petitioner would rely upon the judgment of this Court rendered in *2012 (3) Madras Weekly Notes (Criminal) (DCC) 1 (Madras) in T.R.Kannan vs. Ramani Bai*, wherein the High Court has confirmed the order of acquittal by the Trial Court, wherein the complainant failed to produce the Income Tax Return and *2017 (1) Madras Weekly Notes (Criminal) DCC 166 (Madras) in G.S.Gunasekar Vs. Vinayaga Trading Company*, wherein the High Court has confirmed the order of acquittal



Crl.R.C.No.1646 of 2016

for not producing the Income Tax Return inspite of filing petition under Section 91 of Cr.P.C. for production of Income Tax Return.

8.As far as the facts of the case are concerned, both the Courts on facts has held against the petitioner. The production of income tax return to substantiate the transaction is not a sine qua non for maintaining complaint under Section 138 of the Negotiable Instruments Act. The two judgments cited by the learned counsel for the petitioner are Appeals against acquittal, wherein the complainant failed to produce the income tax return despite a judicial order passed directing the complainant to produce the documents. The failure to produce the documents lead to adverse inference as per the Evidence Act. By drawing the provisions of the Evidence Act, the Court has held that failure to produce income tax return despite summons produced leads to adverse inference.

9.In this case, the petitioner has not sought for any production of income tax returns and further more, the case of the complainant that he is running a coconut business in Sathuvachari Town and having coconut grove have not been disputed. Having admitted the



Crl.R.C.No.1646 of 2016

signatures, date and amount found in the cheque/Ex.P1 and having failed to reply to the Statutory Notice and also let in positive evidence to rebut the present statutory presumption, the conviction and sentence imposed by the Court below cannot be termed as perverse, illegal or error apparent on record.

10.The learned counsel for the petitioner would plead that the sentence of imprisonment of one year and the compensation of Rs.3,00,000/-, the cheque amount are excessive and taking into consideration the age of the petitioner/accused and the friendship between the complainant and the petitioner/accused, leniency could be shown.

11.This Court, taking into consideration the above submission, while confirming the conviction, modifies the sentence as below. The petitioner/accused shall pay a fine of Rs.3,00,000/-, in default to undergo 2 months Simple Imprisonment from the fine amount and compensation of Rs.3,00,000/-, to be paid to the complainant. Fine to be paid within a period of three months from today, failing which the accused to undergo three months Simple Imprisonment.



Crl.R.C.No.1646 of 2016

WEB COPY

12. With the above modifications, the Criminal Revision Case is partly allowed. Consequently, connected miscellaneous petitions are closed.

31.10.2022

vga
Index:yes/No

To

1. The Additional District Judge (FTC),
Vellore District
2. The Fast Track Court,
Judicial Magistrate No.4,
Vellore.
3. The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.R.C.No.1646 of 2016

Dr.G.JAYACHANDRAN,J.

vga

**Crl.R.C.No.1646 of 2016 and
Crl.M.P.Nos.13588 and 13589 of 2016**

31.10.2022