



Crl.RC.No.460 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2022

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THE HON'BLE MR. JUSTICE G.K. ILANTHIRAIYAN

**Crl.RC.No.460 of 2019
and
Crl.M.P.No.6702 of 2019**

M.Ramesh Kumar

... Petitioner

Vs.

M.Manivannan

... Respondent

Prayer: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C to set aside the conviction imposed in the judgement dated 25.04.2017 made in S.T.C.No.2638 of 2012 on the file of the Judicial Magistrate No.I of Mannargudi and the same was modified by judgement dated 26.03.2019 made in C.A.No.20 of 2017 on the file of the learned Additional Sessions Judge, Fast Track Mahila Court of Thiruvavur.

For Petitioner :: Mr.K.Jayaraman

For Respondent :: Mr.Swami Subramanian



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ORDER

This Criminal Revision Case has been filed as against the judgment passed in C.A.No.20 of 2017, dated 26.03.2019 on the file of the learned Additional Sessions (Fast Track Mahila Court), Thiruvarur, thereby confirming the conviction and modified the sentence passed in S.T.C.No.2638 of 2012 on the file of the learned Judicial Magistrate No.1, Mannargudi for the offences punishable under Section 138 of Negotiable Instruments Act.

2. The case of the respondent is that the petitioner borrowed a sum of Rs.5,00,000/- from the respondent and in order to repay the same, he issued a cheque for a sum of Rs.5,00,000/-. When it was presented for collection, it was returned as unpaid as "insufficient funds". After causing legal notice, the respondent lodged a complaint against the petitioner. Hence, the case.

3. The respondent had examined P.W.1 and marked Ex.P1 to Ex.P4. On the side of the petitioner, no one was examined and no documents



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were marked to dispute the case of the respondent herein. On a perusal of oral and documentary evidence, the trial Court found the petitioner as guilty and convicted him for the offence punishable under Section 138 of Negotiable Instruments Act and he was also sentenced to undergo two years of simple imprisonment and awarded compensation payable to the respondent for a sum of Rs.5,50,000/-.

4. Aggrieved by the order, the petitioner preferred appeal before the Additional Sessions (Fast Track Mahila Court), Thiruvavur and the Appellate Court in C.A.No.20 of 2017 vide order dated 26.03.2019 confirmed the conviction, modified the sentence by reducing the imprisonment to nine months and also set aside the compensation payable to the respondent by the petitioner herein.

5. The learned counsel for the petitioner would submit that the Appellate Court had reduced the sentence and set aside the compensation awarded by the trial Court on the ground that the respondent had failed to prove by any documentary evidence with regards to advancement of loan to the tune of Rs.5,00,000/- and that except the cheque issued to the respondent,



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no documents were produced before the trial Court to prove the complaint.

The petitioner categorically rebutted the evidence of the respondent and dispute the case of the respondent herein by cross-examination and the respondent nowhere stated about the date of borrowal of the loan and the date of issuance of cheque to the defacto complainant/respondent. Therefore, the entire case of the complainant/respondent is cooked up one and he had misused the cheque, which was issued for the purpose of security. He would further submit that the petitioner and the respondent are close relatives and only to wreck vengeance, a false complaint has been foisted against the petitioner.

6. Per contra, the learned counsel for the respondent would submit that though the first appellate court had set aside the order of compensation, confirmed the conviction imposed on the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act and that the appellate court had set aside the compensation payable by the petitioner on the ground that the respondent had failed to file any documents to prove the advancement of loan to the tune of Rs.5,00,000/-. However, the petitioner never denied his signature found in the cheque and also issuance of cheque



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in favour of the respondent. Therefore, there is no presumption and both the Courts below had rightly convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act.

7. Heard Mr.K.Jayaraman, learned counsel for the petitioner and Mr.Swami Subramanian, learned counsel for the respondent.

8. A perusal of the records revealed that the petitioner had borrowed loan to the tune of Rs.5,00,000/- from the respondent and in order to repay the same, a cheque was issued to the respondent and when it was presented for collection, it was returned dishonoured as "Insufficient Funds". Thereafter, the respondent caused legal notice on the petitioner and the same was duly received by the petitioner, which was marked as Ex.P4. On receipt of the notice, the petitioner failed to reply to rebut the case of the respondent. That apart, the petitioner did not even denied his signature appended in the cheque issued to the respondent and he did not even examine any witnesses and failed to mark any documents to dispute the case of the respondent herein.



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9. Therefore, the first Appellate Court has rightly reduced the sentence to nine months and convicted the petitioner and set aside the compensation awarded by the trial Court. Hence, this Court finds no infirmity or illegality in the order passed by the Appellate Court and this revision is liable to be dismissed.

10. Accordingly, this Criminal Revision Case stands dismissed. Consequently, connected Miscellaneous Petition is closed.

11.10.2022

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To

1. The learned Judicial Magistrate No.I, Mannargudi.
2. The learned Additional Sessions Judge, Fast Track Mahila Court, Thiruvarur.



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G.K. ILANTHIRAIYAN, J.

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