



Crl.R.C.Nos.1354 & 1355 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.Nos.1354 & 1355 of 2014

P. Krishnamoorthy

... Petitioner
in both Crl.O.Ps

Vs.

V.C. Ravichandran

... Respondent
in both Crl.O.Ps

Prayer in Crl.R.C.No.1354 of 2014: Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 08.10.2012 made in S.T.C.No.1168/2007 on the file of Judicial Magistrate II, Salem and the same is confirmed by the II Additional Sessions Judge, Salem in Crl.A.No.107/2012 dated 15.09.2014.

Prayer in Crl.R.C.No.1355 of 2014: Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 08.10.2012 made in S.T.C.No.1168/2012 and the same is modified by the III Additional District Sessions Judge, Salem in CRP.No.66/2012 dated 24.11.2014.



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For Petitioner : Mr. A. Esakkiappan

For Respondent : Mr. P. Jagadesan

COMMON ORDER

Against the concurrent finding of the Courts below holding the petitioner guilty of offence under Section 138 of Negotiable Instruments Act, for issuing the cheque for Rs.1.50 lakhs in favour of complainant and allowing it to be dishonoured for want of fund, the present revision petitions are filed.

2. For the sake of convenience, the parties are referred as accused and complainant.

3. On 09.09.2006, the accused has borrowed Rs.1.50 lakhs from the complainant and agreed to repay it with interest at the rate of 18% per annum. He has executed a pro-note to that effect. While so, when the complainant demanded the repayment of the money, the cheque bearing No.111828 dated 09.10.2007 drawn in the account maintained by the



accused at M/s.Bharat Overseas Bank Limited, Salem dated 10.10.2007 was given to the complainant. The said cheque when presented for collection, returned for want of fund and therefore, after issuing notice to the residential address as well as to Syndicate Bank, Gugai Branch, Salem, where, he was working as Record Clerk, the present complaint is filed.

4. Before the trial Court, the accused took a defence that the cheque was issued as security for a loan transaction with VCR Finance in which the complainant is one of the partner and insofar as the subject cheque is concerned, there is no legally enforceable debt payable to the complainant. Further, for non-production of his statement of accounts and non-disclosing fact for what purpose the cheque was issued, the complaint is liable to be dismissed.

4(i). However, the trial Court on appreciating the documents relied by the complainant and marked as Exs.P1 to P6, convicted the accused to undergo one year rigorous imprisonment and pay a fine of Rs.5,000/- in default, one month simple imprisonment. The said judgment of conviction and sentence was challenged before the II Additional Sessions Judge, in



Crl.A.No.107 of 2012 by the accused.

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4(ii). For enhancement of punishment, the complainant preferred revision petition in C.R.P.No.66 of 2012 before III Additional District Judge, Salem. The appeal preferred by the accused in C.A.No.107 of 2012 was dismissed on 15.09.2014. The revision filed by the complainant for enhancement was allowed on 24.11.2014 wherein, the appellate Judge modified the sentence into the effect that in addition to the sentence imposed by the trial Court, which is one year rigorous imprisonment and a fine of Rs.5,000/- in default one month simple imprisonment also ordered compensation of Rs.1.50 lakhs being the cheque amount payable within two months in default two months simple imprisonment.

4(iii). The order, dismissing the appeal preferred by the accused and the order allowing the revision filed by the complainant for enhancement, now both challenged in Crl.R.C.Nos.1354 and 1355 of 2014 by the accused.

5. Learned counsel appearing for the accused/revision petitioner would submit that the complaint is silent about the purpose, for which, the cheque issued to the complainant and the complainant has not proved the



legally enforceable debt payable to him. Also submitted that the non filing of account and income tax return of VCR Finance is fatal to the complaint.

6. This Court, on perusing the complaint finds that there is specific averment in the complaint as well as the deposition of P.W.1, the purpose for which, the cheque given by the accused to the complainant. The earlier borrowing of Rs.1.50 lakhs on 09.09.2006, is substantiated by pronote executed by the accused which is marked as Ex.P1. Therefore, to discharge the liability accrued against the pronote, the subject cheque issued and the same has been dishonoured which has given cause of action to prosecute the accused under Section 138 of Negotiable Instruments Act.

7. Insofar as non-production of Income Tax Return of VCR Finance and non-production of statement of accounts of VCR Finance, as rightly pointed out by the Courts below, the transaction is between the complainant and the accused in their respective personal capacity and the VCR Finance has no relevance to the case in hand. Though, the accused has relied upon the statement of accounts which is marked as Ex.P1 to show that



he has made some payment to VCR Finance, the said transaction can have no bearing insofar as the present complaint is concerned. For the above said reason, this Court finds no error in holding the accused guilty of offence under Section 138 of Negotiable Instruments Act.

8. Adverting to the enhanced sentence by the appellate Court, this Court finds that it is not been a substitution of the sentence imposed by the trial Court, but in addition to the sentence imposed by the trial Court. The appellate Court has awarded compensation of the cheque amount, payable within two months from the order in addition to the sentence of 1 year rigorous imprisonment and Rs.5,000/- fine.

8. Section 138 and 139 of Negotiable Instruments Act prescribes penalty in case of dishonouring of cheque for insufficiency of fund in the account. The punishment which could be imposed under such Section, is imprisonment for a term which may extend to two years or with fine, which may extend to twice, the amount of cheque or with both.



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9. The revision Court while ordering compensation in addition with the sentence imposed, has relied upon the judgment of the Hon'ble Supreme Court rendered in *Vijayan Vs. ABN & Others* reported in **2012 (1) CTC 791** and the judgment of this Court in *Pushpa Vs. P.Balasubramanian* reported in **2014 (1) MLJ Crl.664**, has justified awarding compensation, in addition to the sentence of imprisonment and fine imposed by the trial Court. No doubt, the Criminal Procedure Code of Section 357 Cr.P.C., provides for payment of compensation and whenever an offence under Section 138 of Negotiable Instruments Act is dealt award of compensation to an extend of twice the amount of cheque is permitted under statute. The two judgments cited by the Court below reinforces the said power of the Court to impose fine which may extend twice the amount of cheque or with both.

10. In the instance case, the revision Court has found that the term of one year rigorous imprisonment and fine of Rs.5,000/- is not adequate and therefore, enhanced punishment by imposing fine to the



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extend of cheque amount, in addition to Rs.5,000/- already imposed by the trial Court.

11. The revision Court taking note of the fact that the accused is an employee in a Bank had failed to honour the cheque given by him found appropriate to enhance the punishment by awarding the compensation to the extend of the cheque amount, in addition to the imprisonment of one year and Rs.5,000/- fine. The reason assigned by the revision Court for enhancing the sentence, does not fall under the definition of unreasonableness or perverse for the revision Court to interfere. Hence, the order of the revision Court in CRP.No.66/2012 on the III Additional District Sessions Judge, Salem, dated 24.11.2014, is confirmed.

12. In the result, both the revision petitions are dismissed.

01.07.2022

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Dr.G.JAYACHANDRAN,J.

AT

To

- 1.The Judicial Magistrate II, Salem.
- 2.The II Additional Sessions Judge, Salem.
- 3.The III Additional District Sessions Judge, Salem.

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