



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2022

CORAM:

THE HON'BLE DR.JUSTICE G. JAYACHANDRAN

Crl.R.C.No.416 of 2014
and
Crl.M.P.Nos.1 & 2 of 2014

R.G. Ramamoorthy ... Petitioner/Appellant/Accused

Vs

1. N.Ramalingam ... 1st Respondent/1st Respondent/Complainant

2. The State
Represented by Public Prosecutor,
Coimbatore. ... 2nd Respondent/2nd Respondent

Prayer: Criminal Revision Petition has been filed under Section 397 r/w Section 401 of Cr.P.C. to set aside the judgment passed in Criminal Appeal No.44 of 2013 dated 06.09.2013, on the file of IV Additional District and Sessions Judge, Coimbatore confirming the judgment passed by the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore in S.T.C. No.158 of 2012 dated 13.02.2013.

For Petitioner : Mr.J.Pothiraj
For Respondents : Mr.K.Sudhakar
Legal aid Counsel for R1
: Mr.N.S.Suganathan
Govt. Advocate (Crl. Side)

ORDER

This revision is filed challenging the concurrent findings of the Courts below, holding the revision petitioner guilty of the offence under Section 138 of the Negotiable Instrument Act, 1981.

2. Brief facts of the case is that the petitioner herein issued a cheque for Rs.30,000/-, drawn in favour of the



respondent to discharge the handloan borrowed. The said cheque dated 15.03.2003 was presented for collection but the same was returned unpaid with an endorsement "insufficient funds". Thereafter, a statutory notice dated 02.04.2003 was issued to pay the cheque amount. Though the petitioner received the notice, he neither paid the cheque amount nor replied to the notice. Narrating the above facts, criminal complaint was filed before the Judicial Magistrate, Coimbatore. The learned Magistrate taking note of the fact that the cheque was drawn by the accused in favour of the complainant and the presumption falls against the petitioner, which has not been discharged and thereafter found the petitioner guilty and sentenced the petitioner to undergo one month simple imprisonment and a fine of Rs.1,000/- in default to undergo one month simple imprisonment.

3. Aggrieved by the judgment of conviction and sentence, the petitioner preferred an appeal before the IVth Additional District and Sessions Judge, Coimbatore, who on re-appreciation of the evidence, confirmed the judgment of the trial Court. Hence, the present revision by the accused.

4. The learned counsel appearing for the revision petitioner would submit that the complaint is not sustainable in view of the fact that the statutory notice was not duly served on the accused. Secondly, the subject cheque was given to the complainant only as a security and not towards the discharge of any enforceable debt.

5. On perusal of the documents, it indicates that the statutory notice sent to the address of the petitioner being received and in the acknowledgment copy, the signature of the accused is seen predominantly. Taking advantage of the fact that in addressee column, apart from the name of the accused, his business name Devi Art Printers is also mentioned, it is the contention that the statutory notice not duly served on the accused. The purpose of the statutory notice is to inform the drawer of the cheque that the cheque issued was not honoured and if the drawer fails to pay the cheque amount within 15 days, he will be liable for criminal prosecution.

6. As far as the plea that the subject cheque was issued only as a security, it is admitted by the petitioner that he borrowed a sum of Rs.18,000/- from the complainant during the month of November, 2002 and gave a cheque as security and he alleges that the complainant has filled the cheque given for security for Rs.30,000/- and presented the same. He also pleaded that for the debt of Rs.18,000/-, the complainant took away the computer of the petitioner/ accused which is worth about Rs.40,000/-. These averments are not duly proved by the



petitioner/ accused, though, he and one Murugesan has mounted the witness box and being examined as DW1 and DW2.

7. In the light of the above fact, while the fact finding Courts have held against the petitioner and the finding is neither perverse not improper, this Court is of the view that there is no ground to interfere with the concurrent finding of the Court below by exercising its revisional powers.

8. Accordingly, this Revision Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

gba

To

1. The IV Additional District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate,
Fast Track Court at Magisterial Level-II,
Coimbatore.
3. The Public Prosecutor,
Coimbatore.
4. The Public Prosecutor,
High Court, Madras-104.
5. The Inspector of Police,
Coimbatore City Police Station,
Coimbatore.

+1cc to Mr.J.Pothiraj, Advocate, S.R.No.35592

Cr1.R.C.No.416 of 2014
and
Cr1.M.P.Nos.1 & 2 of 2014

SSD(CO)
UMA(05/07/2022)