

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.945 of 2022

K.Periasamy

... Petitioner

Vs.

K.Elango

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 & 401 Cr.P.C. to set aside the judgment dated 27.06.2022 made in Crl.A.83 of 2021 on the file of the Additional District (Fast Track) Court, Mettur, confirming the judgment dated 19.11.2021 made in C.C.No.46 of 2017 on the file of the Judicial Magistrate Court No.1, Mettur and allow the Criminal Revision.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr.R.Thirumoorthy

ORDER

Challenging the judgment of conviction and sentence imposed on the petitioner by the learned Judicial Magistrate Court No.1, Mettur dated 19.11.2021 in C.C.No.46 of 2017, which was confirmed by the learned Additional District Judge, Fast Track Court, Mettur, vide judgment dated 27.06.2022 in Crl.A.No.83 of 2021, this Criminal Revision Case has been filed.

2. The petitioner herein is the sole accused in C.C.No.46 of 2017 and the respondent herein, filed a complaint against him under Section 138 of Negotiable Instruments Act, stating that the petitioner/accused had issued a cheque bearing No.797033 dated 30.01.2017 for a sum of Rs.15,00,000/- towards the repayment of the amount received from the respondent/complainant, and it was returned as "insufficient funds". Therefore, the respondent/complainant issued a legal notice to the petitioner/accused to pay the cheque amount, however, the petitioner not paid the amount and hence, the respondent filed the above complaint.

3. Before Trial Court, the respondent/ complainant examined himself as PW1 and marked Ex.P1 to Ex.P5 on his side. On the side of the defence, four witnesses were examined as Dw1 to Dw4 and three documents were marked as Ex.D1 to Ex.D3.

4. After perusing the oral and documentary evidence, the Trial Court has convicted the petitioner/accused and sentenced him to undergo 1 year simple imprisonment for the offence under Section 138 of Negotiable Instruments Act and also directed him to pay the cheque amount of Rs.15,00,000/- as compensation to the complainant within a period of 2 months from the date of judgment, failing which the accused has to undergo default sentence of simple imprisonment of 6 months. Aggrieved by the above judgment of conviction, the petitioner/ accused, filed an appeal in Crl.A.No.83 of 2021 before the Additional District Judge, Fast Track Court, Mettur, which was also ended negative, vide judgement dated 27.06.2022. Challenging the above judgments of the Trial Court and the first Appellate Court, the petitioner filed the present Criminal Revision Case.

5. The learned counsel for the petitioner/accused submitted that the Trial Court as well as the first Appellate Court had not properly considered the evidence adduced on the side of the petitioner. He further submitted that the petitioner did not know the respondent and he had not received a sum of Rs.15,00,000/- as a loan from him. Further, the petitioner received a sum of Rs.1,00,000/- from one Narashimman (Dw3) and since the petitioner has not repaid that amount, he conducted a Panchyat, through one Palanichamy and before Panchayatar, the said Palanichamy obtained a blank check as security from the petitioner. Thereafter, though the petitioner repaid the amount, the said Palanichamy did not return the cheque and it was misused by the respondent for filing the complaint against the petitioner.

6. The learned counsel for the petitioner further submitted that to establish the defence case, the petitioner examined the said Narashimman as DW3 before the Trial Court. However, the Trial Court has not properly appreciated the evidences and the materials adduced on behalf of the

petitioner and has erred in passing the judgment of conviction and sentence against the petitioner. Therefore, judgment of the Trial Court and the first Appellate Court are liable to be set aside.

7. The learned counsel for the respondent/ complainant submitted that the petitioner has not disputed the factum of issuance of cheque as well as his signature in the cheque and further it is admitted by the petitioner that the cheque bearing No.797033 was maintained by him in his bank account. The petitioner projected his case before the Trial Court, as if he received a sum of Rs.1,00,000/- as hand loan from one Narashimman and he had given a blank cheque as security for repayment of the above amount to one Palanichamy before Panchyatar and it was misused by the respondent for giving a false complainant against the accused.

8. The learned counsel for the respondent also submitted that, while filing a petition in Crl.O.P.No.19178 of 2017 before this Court to quash the criminal proceedings of the case in C.C.No.46 of 2017 on the file of the

Judicial Magistrate Court No.1, Mettur, the petitioner has taken a different stand that, there was a dowry dispute between the petitioner and his daughter's father-in-law, namely, Manoharan, in view of the same, the said Manoharan had stolen cheques from the petitioner and had instigated the complainant to file a false complaint against the petitioner, with an intention to harass him.

9. The learned counsel for the respondent further submitted that the petitioner has taken another stand before the Trial Court while deposing evidence as DW4 that the respondent was a driver to him and he stole the cheque. Therefore, in view of the different stands taken by the petitioner, the Trial Court has not considered the version of Narashimman (DW3), since it is unworthy and has rightly found the petitioner guilty of the offence under Section 138 of Negotiable Instruments Act and convicted him, which was also confirmed by the first Appellate Court. Therefore, since there is no reason to interfere with the orders passed by the Trial Court as well as the first Appellate Court, the present Criminal Revision Case is liable to be

dismissed.

10. Heard the learned counsel for the petitioner/accused and the learned counsel for the respondent/complainant and I have perused the materials on record.

11. A perusal of the records reveals that the respondent/ complainant filed a complaint under section 138 of Negotiable Instruments Act before the Trial Court against the petitioner/accused, since the cheque bearing No.797033 dated 30.01.2017 for Rs.15,00,000/- issued by the petitioner/accused towards repayment of loan of Rs.15,00,000/- received from the complainant was dishonoured and returned by the bank with an endorsement "insufficient of funds". After issuing legal notice for non payment of the cheque amount by the petitioner/accused, the respondent/ complainant had prosecuted the case against the petitioner before the Trial Court.

12. After recording oral and documentary evidence on both side and perusing the entire materials on record, the Trial Court found guilty of the petitioner and convicted and sentenced him as stated above. The Appeal filed before the first Appellate Court has also ended against the petitioner/accused. Challenging the same, the revision petition is before this Court.

13. According to the petitioner/accused, he did not know the respondent and he neither received any money from him nor handed over any cheque to him for repayment of Rs.15,00,000/-. The petitioner in his counter affidavit filed before the Trial Court stated that, there was a dispute between him and one Manoharan, who is father-in-law of his daughter and to take a revenge, the said manoharan had stolen the cheque from the petitioner/ accused and instigated the respondent to file a false complaint against the petitioner/ accused.

14. Further, it reveals from the records that one Narashimman was examined as DW3 on the side of the petitioner and the Dw3 in his evidence

deposed that the petitioner received a sum of Rs.1,00,000/- from him as a loan and since he did not repay that amount, a Panchayat talks held between them through one Palanichamy, and for security, a blank cheque was received as security from the petitioner by the said Palanichamy. Thereafter, the petitioner repaid the amount to him (DW3), however, Palanichamy did not hand over the cheque to the petitioner and it was misused by the respondent for filing the present false complaint.

15. The above stand is totally contrary to the statement made by the petitioner/accused in Crl.OP No.19178 of 2017 to quash the proceedings in C.C.No.46 of 2017 on the file of the Judicial Magistrate Court No.1, Mettur. In the above Criminal Original Petition, the petitioner/accused stated that the respondent/complainant was a driver of one Manoharan, the father-in-law of his daughter and due to dowry dispute between the petitioner and the said Manoharan and in order to harass the petitioner, the said Manoharan had stolen the cheques from the petitioner and misused the same to file a false complaint against the petitioner by instigating the respondent.

16. Therefore, the above defences projected in different dimension by the petitioner/accused before the Trial Court was taken into consideration by the Trial Court and has discussed in detail, legally and elaborately with the evidence of the witnesses and the materials produced by the parties. The Trial Court has given a reasoned order in detail and has rightly found the petitioner/accused guilty of the offence under Section 138 of Negotiable Instruments Act. The first Appellate Court has also rightly come to the conclusion and confirmed the judgment passed by the Trial Court. Therefore, this Court do not find any infirmity or illegality in the orders passed by the Trial Court as well as the first Appellate Court and hence, the Criminal Revision Case fails.

17. At this juncture, the learned counsel for the respondent/complainant submitted that, as per the order of this Court in Crl.M.P.No.10128 of 2022 dated 09.09.2022, the revision petitioner had deposited 50% of the cheque amount to the credit of Crl.R.C.No.945 of 2022 before the Registry and hence, the respondent may be permitted to

withdraw the deposited amount.

18. Accordingly, this Criminal Revision Case is dismissed. The respondent/ complainant is permitted to withdraw the deposited amount by the petitioner/ accused before the Registry, by following due process of law.

16.12.2022

Index: Yes/No

Internet: Yes/No

mst

To

1. The Additional District Judge, Fast Track Court, Mettur.
2. Judicial Magistrate No.1, Mettur.

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V.SIVAGNANAM, J.,
mst

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