



Crl.R.C.No.1315 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2022

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1315 of 2022

and

Crl.M.P.Nos.13981 and 13983 of 2022

R.Ashokan

... Petitioner

..VS..

S.Suresh

... Respondent

Criminal Revision Case filed under Sections 397 (1) r/w 401 Cr.P.C to set aside the order and judgment dated 04.08.2022 in C.A.No.78 of 2021 on the file of the Special Court for Trial of Cases Registered Under SC/ST (POA) Act, Namakkal, confirming the judgment of conviction and sentence and the amount of Rs.2,00,000/- awarded as compensation by the trial Court is reduced to Rs.40,000/- by the learned Judicial Magistrate, Paramathi, Namakkal District by its judgment dated 8.4.2021 made in S.T.C.No.532 of 2017 and acquit the petitioner/appellant.

For Petitioner : Mr.S.Panneerselvan

For Respondent : Mr.D.Senthur Kugan



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ORDER

This revision has been preferred challenging the judgment dated 04.08.2022 passed in C.A.No.78 of 2021 by the learned Sessions Judge, Special Court for Trial of Cases Registered Under SC/ST (POA) Act, Namakkal.

2. The case of the respondent/complainant is that the petitioner/accused purchased L&T Kumatsu PC-130 Excavator Machine No.N.L.50074 from the complainant on 10.12.2016 for a sum of Rs.10,00,000/- and thereby, the accused paid a sum of Rs.8,00,000/- to the complainant on the same day itself and for the balance amount i.e. Rs.2,00,000/-, the accused has issued a cheque bearing No.000001 dated 10.12.2016 drawn on Karur Vysya Bank in favour of the complainant. On 26.12.2016, when the cheque was presented for collection, the same was returned with an endorsement 'stop payment' on 30.12.2016. Thereafter, at the request of the accused, the complainant again re-presented the cheque for collection on 06.02.2017 and the same was



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returned on 09.02.2017 as 'stop payment'. Hence, the respondent/complainant issued a legal notice to the petitioner/accused. After receipt of the said legal notice, the petitioner neither sent any reply nor repaid the cheque amount. Hence, the respondent filed a private complaint against the petitioner in S.T.C.No.532 of 2017 before the learned Judicial Magistrate, Paramathi for the offence under Section 138 of The Negotiable Instruments Act, 1881 [hereinafter referred to as 'N.I.Act' for the sake of convenience].

3. After trial, the learned Magistrate found that the petitioner is guilty for the above offence and convicted and sentenced him to undergo simple imprisonment for a period of one month and to pay a sum of Rs.2,00,000/- as compensation to the respondent/complainant, in default, to undergo simple imprisonment for one month. Challenging the said order, the petitioner preferred an appeal in Crl.A.No.78 of 2021 before the learned Sessions Judge, Special Court for Trial of Cases Registered Under SC/ST (POA) Act, Namakkal. The Appellate Court partly allowed the



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appeal by confirming the conviction and sentence of the trial Court and modified the compensation from Rs.2,00,000/- to Rs.40,000/-. Aggrieved by the same, the petitioner has preferred the present revision case.

4. The learned counsel for the petitioner/accused submitted that though the petitioner issued a cheque for a sum of Rs.2,00,000/-, even before presenting the cheque, the petitioner had deposited Rs.1,60,000/- to the credit of the respondent/complainant's account on 12.12.2016 and hence, the balance amount of Rs.40,000/- as to be paid to the complainant. However, the respondent/complainant presented the cheque for a sum of Rs.2,00,000/- without deducting the amount of Rs.1,60,000/- which was already received from the petitioner. Therefore, no cause of action arisen for the respondent/complainant to file the complaint.

5. In support of his contention the learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in ***Mr.Mehmood Umar Faruqui, AOR Vs. Mr.Purvish Jitendra Malikan, AOR and others*** reported in ***2022 Live Law (SC) 830***. The relevant



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paragraph No.30(iv), which reads as follows :

" The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the 'legally enforceable debt' on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds; and"

6. The learned counsel for the petitioner further submitted that before presenting the cheque, the revision petitioner/accused had made part payment of Rs.1,60,000/- to the respondent/complainant. The learned Sessions Judge found that as the petitioner had paid part payment, modified the compensation from Rs.1,60,000/- to Rs.40,000/-, but failed to consider the fact that there was no cause of action to file the complaint against the petitioner. The liability is only for a sum of Rs.40,000/-, where as, the cheque was presented for a sum of

Rs.2,00,000/- and hence, there was no legally enforceable debt. The trial Court and the appellate Court failed to consider facts and law lay down by



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the Hon'ble Supreme Court and wrongly convicted and sentenced the petitioner, which warrants interference of this Court.

7. The learned counsel for the respondent submitted that the petitioner/accused has not specifically stated that for what purpose he had deposited Rs.1,60,000/- to the credit of the complainant. Therefore, he cannot say that the part payment was made for discharging the cheque amount. Hence, both the Courts below rightly found that the revision petitioner has committed the offence under Section 138 of N.I.Act and convicted and sentenced the petitioner.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondent and also perused the materials available on record.

9. On a careful reading of the entire materials, it would reveal that the disputed cheque was presented on 26.12.2016 and the same was returned on 30.12.2016. Even before presenting the cheque, the petitioner



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had deposited Rs.1,60,000/- to the credit of the complainant's account on 12.12.2016, but the respondent presented the cheque for a sum of Rs.2,00,000/-. The contention raised by the learned counsel for the respondent is that after receipt of the statutory notice, the petitioner neither sent any reply nor repaid the amount. Though non-sending of the reply is not a sole ground to disbelieve the case of the accused, the complainant has to prove that the cheque was issued for legally enforceable debt. On the date of presenting the cheque, the liability of the revision petitioner is Rs.40,000/-, whereas, the cheque was presented for Rs.2,00,000/-. The lower appellate Court found that the petitioner has already deposited Rs.1,60,000/- and modified the compensation from Rs.2,00,000/- to Rs.40,000/-. Challenging the said order, the revision petitioner has filed the present revision, but, the respondent/complainant has not filed any appeal or cross-objection. The order of the learned Session Judge clearly shows that out of Rs.2,00,000/-, the petitioner has already deposited Rs.1,60,000/- and hence, now he cannot take a stand that for what purpose the petitioner deposited the said amount to his credit. However, as per the



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law lay down by the Hon'ble Supreme Court, before presenting the cheque, part payment was made and thereafter, if the complainant presented the cheque for entire amount, no cause of action would arise. Both the Courts below failed to consider the above facts and convicted and sentenced the petitioner.

10. At this juncture, the learned counsel for the petitioner submitted that at the time of admitting the appeal, the petitioner paid the balance amount of Rs.40,000/- before the Court below as compensation and hence, entire cheque amount was paid by the petitioner.

11. In the light of the above facts, this Court is of the opinion that the entire cheque amount has been paid to the complainant. Further, on the date of presenting the cheque, the liability is only for a sum of Rs.40,000/-, whereas the cheque was presented for Rs.2,00,000/-, therefore, offence under Section 138 of Negotiable Instruments Act would not attract.

12. Taking into consideration the facts and circumstances and as per the law lay down by the Hon'ble Supreme Court, this Court finds that the respondent has no cause of action to file the complainant against the



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petitioner and the judgment passed by the learned Sessions Judge is liable to be set aside.

13. In the result, this Criminal Revision Case is allowed and the judgment dated 04.08.2022 passed in Crl.A.No.78 of 2021 by the learned Sessions Judge, Special Court for Trial of Cases Registered under SC/ST (POA) Act, Namakkal by convicting and sentencing the petitioner is set aside. The respondent/complainant is at liberty to withdraw the compensation amount of Rs.40,000/- which was already deposited before the Court below. Consequently, connected miscellaneous petitions are closed.

19.10.2022

Index: Yes/No
Speaking Order/Non-Speaking Order
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P.VELMURUGAN, J.

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To

- 1.The Sessions Judge,
Special Court for Trial of Cases
Registered Under SC/ST (POA) Act,
Namakkal.
- 2.The Judicial Magistrate,
Paramathi,
Namakkal District

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