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CRL.R.C.No.1111 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.1111 of 2019

V.T.Murugan

... Petitioner

Vs.

Ganesan (died) rep. by his
wife and legal heir
Muniyammal

... Respondent

PRAYER: Criminal Revision case has been filed under Sections 397 & 401 of Cr.P.C to call for the records made in C.C.No.21 of 2014 on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial level, Thiruvallur, order dated 14.05.2018 which was modified in C.A.No.82 of 2018 on the file of the learned I Additional District and Sessions Court, Thiruvallur, order dated 23.04.2019, set aside the same and allow this Criminal Revision Petition.

For Petitioner : Mr.P.Srinivasan

For Respondent : Mr.R.Sasikumar



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ORDER

This Criminal Revision is filed as against the judgment passed in C.A.No.82 of 2018 dated 23.04.2019 on the file of the learned I Additional District and Sessions Court, Thiruvallur, modifying the conviction and sentence imposed in C.C.No.21 of 2014 dated 14.05.2018 on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial level, Thiruvallur, thereby convicting the petitioners for the offences under Section 138 of the Negotiable Instruments Act, 1881 (herein after referred to as “the NI Act”)

2. The petitioner is an accused in the complaint lodged by the respondent for the offence under Section 138 of the NI Act. The case of the complainant is that the petitioner entered into an agreement for sale for the property belonging to him. At the time of agreement for sale, the respondent paid a sum of Rs.6,15,000/- toward the sale consideration and thereafter paid Rs.10,000/- towards measuring the said land. Thereafter, the respondent came to know that the said land belonged to the accused was denotified community (D.C.) lands.



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3. Therefore, the complainant requested the petitioner to cancel the agreement for sale. Accordingly, the accused agreed to cancel the agreement and executed the cancellation of sale agreement on 17.10.2013. On that day, he repaid the part of the amount of Rs.2,00,000/- to the complainant. Towards the balance sale consideration of Rs.4,15,000/-, the accused had issued two cheques for a sum of Rs.2,00,000/- dated 10.11.2013 and Rs.2,15,000/- dated 15.12.2022. On instructions, the complainant presented both the cheques for collection. However, both the cheques were returned dishonour for the reason that funds insufficient. After causing statutory notice, the complainant lodged the complaint.

4. In order to prove his case, the complainant had examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.10. On the side of the accused, he examined D.W.1 & D.W.2 and marked Ex.R.1 & Ex.R.2. On a perusal of oral and documentary evidence, the trial Court found the petitioner's guilty and convicted for the offence under Section 138 of the NI Act and



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also sentenced him to undergo one year simple imprisonment and ordered to pay compensation of Rs.4,15,000/-. Aggrieved by the same, the petitioner preferred an appeal and the appellate Court confirmed the conviction and modified the sentence alone as to pay compensation of Rs.4,15,000/- in default to undergo six months simple imprisonment. Hence, the petitioner filed this present revision.

5. The learned counsel appearing for the petitioner submitted that there was no legally enforceable debt and the alleged cheque was not issued for any legally enforceable debt. On receipt of the notice, the petitioner/accused categorically denied all the allegations and rebutted the presumption arising out of the provision under Section 138 of the NI Act. According to the respondent, he entered into a sale agreement along with the petitioner to purchase the land belonged to the accused. At the time of agreement, the petitioner received a sum of Rs.6,15,000/- and thereafter he received a sum of Rs.10,000/- for measuring the land.



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5.1. He further submitted that later the respondent found that the said land belonged to DC and as such he did not want to purchase the same and requested to cancel the said agreement. On 17.10.2013, they entered into cancellation of sale agreement and paid a sum of Rs.2,00,000/- and for the remaining amount the petitioner issued two cheques for the sum of Rs.2,00,000/- and Rs.2,15,000/-. However, the respondent failed to prove same by substantial material as such cancellation of agreement for sale is not proved. Further, the respondent himself examined as P.W.1 and he deposed that on two dates, he entered into agreement with the petitioner for the very same property. That apart, he categorically deposed that the sale consideration was fixed for a sum of Rs.56,16,000/-.

5.2. In support of his case, the respondent also examined P.W.3 and he deposed that the sale agreement was in oral. Therefore, there is no such agreement for sale as deposed by P.W.1. This contradiction between P.W.1 and P.W.3 revealed that there was no agreement for sale. There was an oral agreement and whatever the amount received as advance for



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selling the property, was duly returned by the petitioner and the alleged cheques were received by undue influence. Therefore, the alleged cheques have not taken any legally enforceable debt.

5.3. He further submitted that the petitioner himself examined as D.W.2, who accompanied with the petitioner at the time of entering to the agreement. He also deposed that whatever the amount received as advance was duly repaid by the petitioner. Therefore, there was no legally enforceable debt on the part of the petitioner. The alleged cheques were obtained by the respondent under undue influence and he was never issued any cheque for any legally enforceable debt. Therefore, the respondent failed to prove his case and he did not discharge the initial burden as contemplated under Section 138 of the NI Act. Unfortunately, without considering the above facts and circumstances, both the Courts below convicted the petitioner and prayed to allow this revision.

6. Per contra, the learned counsel appearing for the respondent submitted that mere issuance of cheque is proved the presumption under



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Section 139 of the NI Act and therefore, the respondent need not to prove that the cheques were issued for legally enforceable debt. The cancellation of sale agreement, which was marked as Ex.P.1, was executed on 17.10.2013 and the petitioner never denied the execution of the said document. He denies only the issuance of the cheques. In the very same document, after returning the part of the amount of Rs.2,00,000/- for the balance amount, he issued the two cheques. However the petitioner took a stand that those cheques were obtained under undue influence and the same were not issued for legally enforceable debt.

6.1. He further submitted that in order to prove his case, the respondent examined P.W.1 to P.W.3. P.W.3 is none other than the father-in-law of the complainant. He categorically deposed that the petitioner entered into an agreement for sale and on the date of agreement, the petitioner received a sum of Rs.6,15,000/- as advance and he further received a sum of Rs.10,000/- for measuring the land. Thereafter, they came to understand that the said land is belonged to DC land and as such



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the complainant requested to cancel the agreement for sale. Accordingly, on 17.10.2013, the petitioner entered into agreement to cancel the agreement and also repaid a sum of Rs. 2,00,000/- and for remaining amount, he issued two cheques for Rs.2,00,000/- and Rs.2,15,000/-. Therefore, the respondent proved his case beyond any doubt and both the Courts below rightly convicted the petitioner and it doesn't warrant interference from this Court.

7. Heard Mr.P.Srinivasan, learned counsel appearing for the petitioner and Mr.R.Sasikumar, learned counsel appearing for the respondent.

8. The case of the respondent is that he entered into an agreement for sale with the petitioner to purchase the land belonged to him. On the date of agreement, the respondent paid a sum of Rs.6,15,000/- as advance and thereafter he paid Rs.10,000/- towards measuring the land. Subsequent, he came to understand that the land belonged to D.C. land and requested the petitioner to cancel the



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agreement for sale and requested to return the advance amount which was already paid by the respondent.

9. On 17.10.2013, the respondent and the petitioner entered into cancellation of agreement for sale, which was marked as Ex.P.1. It revealed that the petitioner repaid the part of the advance amount to the tune of Rs.2,00,000/- and for the remaining amount he issued two cheques for Rs.2,00,000/- and Rs.2,15,000/- drawn on the Indian Bank. It is also revealed from the document dated 17.10.2013, within a period of ten or fifteen days viz., on or before 30.10.2013, the petitioner undertook to repay the balance advance amount and for the said sum and he issued the cheques. The petitioner never denied the execution of the said document and the signature found in the cheques.

10. Further the petitioner admitted his signature found in the cheque as well as the Ex.P.1. On the one hand, the petitioner had taken a stand that he received only Rs.2,00,000/- as advance and the same was repaid on 17.10.2013 under the cancellation of agreement for sale. On



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the other hand, he denies the issuance of cheque. That apart, on receipt of the statutory notice, the petitioner issued reply notice dated 28.01.2014, which was marked as Ex.P.8.

11. On a perusal of Ex.P.8, it revealed that the petitioner entered into an agreement for sale on 10.07.2013. As per the said agreement the respondent agreed to purchase the land belonged to the petitioner. Later the respondent did not want to purchase the said land and requested to return back his amount. Accordingly, the petitioner returned the entire advance amount on 13.10.2013. It is pertinent to note that the petitioner never mentioned the amount in his reply notice.

12. However, the petitioner executed the cancellation of agreement for sale dated 17.10.2013 which was marked as Ex.P.1. On a perusal of Ex.P.1 revealed that on 17.10.2013, the petitioner returned the part of the advance amount of Rs.2,00,000/- and for the remaining amount, he issued two cheques. The petitioner in order to disprove the case of the respondent examined D.W.2 and he also categorically



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deposed that there was an agreement between the respondent and the petitioner in order to purchase the land belonged to the petitioner. Thereafter, the respondent requested to cancel the agreement and as such the petitioner returned the advance amount of Rs.2,00,000/-. Further the respondent agreed to return back the cheques, after receipt of the amount from other persons. Therefore, the contention of the petitioner that the cheques were obtained under undue influence is nothing but after thought.

13. If at all the cheques were obtained under undue influence upon under coercion, definitely the petitioner would have been lodged police complaint. Even after receipt of the statutory notice, the petitioner did not even whisper about the said allegations as if the alleged cheques were obtained under undue influence and also he did not take any steps to return back the cheques.

14. Further the learned counsel appearing for the petitioner contended that there was contradiction in respect of the date of

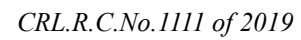


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agreement between P.W.1 and P.W.3. On a perusal of deposition of P.W.3 revealed that he mentioned about the cancellation of agreement for sale, which was marked as Ex.P.1. That apart, D.W.1 and D.W.2 also categorically admitted that there was an agreement between the petitioner and the respondent. Even assuming that there was contradiction, it would not affect the case of the respondent. Hence, the respondent proved his case by discharging initial burden arising out of the Section 138 of the NI Act and both the Courts below rightly convicted the petitioner. This Court finds no infirmity or illegality in the order passed by the Court below.

15. In view of the above discussion, the conviction and sentence imposed on the petitioner in C.A.No.82 of 2018 dated 23.04.2019 on the file of the learned I Additional District and Sessions Court, Thiruvallur, modifying the conviction and sentence imposed in C.C.No.21 of 2014 dated 14.05.2018 on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial level, Thiruvallur, are hereby confirmed. The petitioner is directed to pay the fine amount within a period of two weeks



16. Accordingly, the Criminal Revision Petition stands dismissed.

01.12.2022

Speaking/Non-Speaking order

To

1. The I Additional District and Sessions Court, Thiruvallur.
2. The Judicial Magistrate, Fast Track Court, Magisterial level, Thiruvallur.



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G.K.ILANTHIRAIYAN, J

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