



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C. (MD)No.32 of 2020

Thinakar

... Petitioner/Appellant/
Sole Accused

Vs.

1.Chendurpandiayan

...Respondent No.1/Respondent No.1/
Complainant

2.The State of Tamilnadu Rep. by
The Public Prosecutor,
Nagercoil,
Kanyakumari District.

...2nd Respondent/2nd Respondent

Prayer: This Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C., to call for the records and set aside the conviction imposed in C.A.No.23 of 2015 on the file of the Additional District and Sessions Judge (Fast Track), Kanyakumari at Nagercoil, dated 11.11.2019 modifying the judgement of the Judicial Magistrate (Fast Track) No.I, Nagercoil in C.C.No.29 of 2013 dated 16.04.2015.

For Petitioner : Mr.T.Nelson

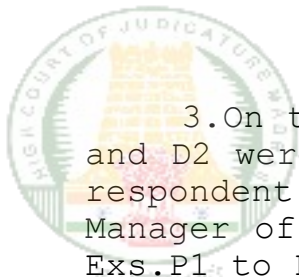
For Respondents : Mr.V.Sasikumar for R1

Mrs.M.Aasha,
Govt. Advocat (Crl. Side) for R1

O R D E R

This criminal revision case has been filed to set aside the conviction imposed in C.A.No.23 of 2015 on the file of the Additional District and Sessions Judge (Fast Track), Kanyakumari at Nagercoil, dated 11.11.2019 modifying the judgement of the Judicial Magistrate (Fast Track) No.I, Nagercoil in C.C.No.29 of 2013 dated 16.04.2015.

2.The petitioner is the accused and the first respondent is the complainant. The case of the first respondent is that the petitioner borrowed a sum of Rs.13 Lakhs from him on 20.08.2012 and agreed to repay the same in two months. In order to repay the same, the petitioner issued two cheques to the first respondent. When the said cheques were presented for collection, they were dishonoured for the reason that there is no sufficient fund. Therefore, the first respondent issued legal notice dated 08.12.2012 and the same was received by the petitioner. However, he did not respond to it. Therefore, the first respondent lodged a complaint under Section 138 of Negotiable Instruments Act against the petitioner.



3.On the side of the petitioner, no one was examined and Exs.D1 and D2 were marked. On the side of the first respondent, the first respondent examined himself P.W.1 and one Kalai Selvan, the Branch Manager of Nagercoil, Bank of Maharashtra was examined as P.W.2 and Exs.P1 to P9 were marked.

4.After consideration of oral and documentary evidence, the trial Court convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.13,00,000/-, the cheque amount as compensation to the complainant. Challenging the same, the petitioner filed C.A.No.23 of 2015 before the Additional District and Sessions Court (Fast Track), Kanyakumari at Nagercol and the same was partly allowed by setting aside the sentence alone however, confirmed the award of compensation. Aggrieved by the same, the present criminal revision case has been filed.

5.The learned counsel for the petitioner submitted that the petitioner borrowed a sum of Rs.20 Lakhs from the first respondent in the year 2010 and issued promissory note. While being so, he would not have borrowed a further sum of Rs.13 Lakhs as alleged by the first respondent on 20.08.2012. To that extent, he cross examined the first respondent, thereby rebutted the evidence of the first respondent. In fact, the first respondent filed a suit in O.S.No.109 of 2013 for recovery of money insofar as for a sum of Rs.20 Lakhs, which was borrowed in the year 2010 and it is pending. Therefore, no consideration was passed in the alleged cheques, which were presented for collection by the first respondent. No prudent man would lend further huge amount without any security, when the earlier borrowal is still pending. Therefore, there is only one borrowal by the petitioner, for which the first respondent filed a suit and the same is pending. When two cheques were issued at the time of borrowal of money as security purposes and they were used and filed a complaint for the offence under Section 138 of Negotiable Instruments Act.

6.The learned counsel for the first respondent submitted that the first respondent lodged a complaint for the offence under Section 138 of Negotiable Instruments Act. Therefore, it is the duty of the petitioner to rebut the presumption by appropriate evidence. Except cross examination of P.W.1, the petitioner failed to rebut the presumption made by the first respondent. On a perusal of deposition of P.W.1, it would show that the petitioner and the first respondent are friends from the year 2007 and there are many transactions between them. He further submitted that the first respondent borrowed a sum of Rs.20 Lakhs and did not repay the same. Therefore, the first respondent filed O.S.No.109 of 2013 for recovery of money and it is still pending. The trial Court has correctly appreciated the facts and passed the well reasoned judgment and it does not call for any interference.



7. Heard the learned counsel for the petitioner, the learned counsel for the first respondent, the learned Government Advocate (Crl. Side) for the second respondent and perused the materials available on record.

8. On a perusal of the materials on record would show that the petitioner categorically admitted that he issued two cheques, which is the subject matter. When the cheques were presented for collection, they were returned for the reason that there is sufficient funds. The petitioner also admitted the signature in the cheques. Admittedly, the petitioner failed to rebut the presumption. Apart from that, the petitioner after receipt of the legal notice did not send any reply. Therefore, the defence taken by the petitioner that the cheques was misused by the first respondent was not at all proved and the first respondent proved his case beyond reasonable doubt. Therefore, the burden was shifted to the shoulder of the petitioner to rebut the same. Since the petitioner failed to rebut the same, the trial Court convicted the petitioner for the offence under Section 138 of the Negotiable Instruments Act. However, in the interest of justice, the first appellate Court set aside the sentence and confirmed the award of compensation. This Court finds no infirmity or illegality in the concurrent judgments. The impugned judgment is hereby confirmed and this criminal revision case stands dismissed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar (CS)

ias

To:

1. The Additional District and Session Court (Fast Track),
Kanyakumari,
At Nagercoil.

2. The Judicial Magistrate No.I (Fast Track),
Nagercoil.

Copy to
The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.



+1 CC to M/s.V.SASIKUMAR, Advocate (SR-14572[F] dated 25/03/2022)

+1 CC to M/s.T.NELSON, Advocate (SR-14573[F] dated 25/03/2022)

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