



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2022

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C. (MD)No.302 of 2020

and

Crl.M.P(MD)Nos.2514 & 2516 of 2020

WEB COPY

Arivuraj

... Petitioner/Appellant/Accused

Vs

Sivakandhan

... Respondent/Respondent/Complainant

Prayer: Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C. to call for the records pertaining to the judgment passed in Crl.Appeal No.69 of 2016, dated 04.11.2019 by the Additional District and Sessions Judge, Sivagangai, Sivagangai District where in confirmed the conviction and sentences of 1 years Rigorous imprisonment Under Section 138 of Negotiable Instrument Act, 1881 and directed the petitioner to pay Rs.3,00,000/- of cheque amount as compensation U/s.357(3) Cr.P.C to the respondent in default for that another 3 months Rigorous imprisonment sentence imposed by the Fast Track Court (Magisterial Level) Karaikudi, Sivagangai District in STC No.40 of 2016 and set aside both the Courts judgment by allowing this Criminal Revision Case.

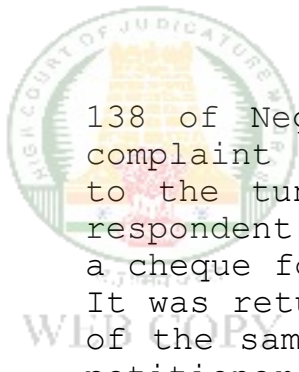
For Petitioner : Mr.R.Murugappan

For Respondent : No appearance

O R D E R

This Criminal Revision Case has been filed challenging the judgment passed in Crl.A.No.69 of 2016, dated 04.11.2019 by the learned Additional District and Sessions Judge, Sivagangai, Sivagangai District, thereby, confirming the conviction and sentence of one year Rigorous imprisonment, under Section 138 of Negotiable Instruments Act, 1881 and directed the petitioner to pay Rs.3,00,000/- of cheque amount as compensation under Section 357(3) Cr.P.C, to the respondent, in default, to undergo further period of 3 months Rigorous imprisonment, imposed by the Fast Track Court (Magisterial Level) Karaikudi, Sivagangai District in S.T.C.No.40 of 2016.

2.The petitioner is the accused on the basis of the complaint lodged by the respondent for the offence punishable under section



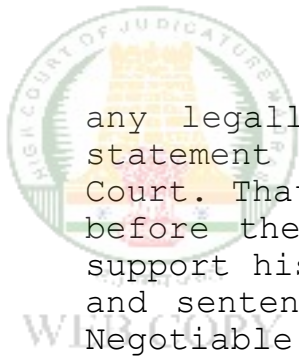
138 of Negotiable Instruments Act, 1881. The respondent lodged a complaint alleging that on 28.04.2014, the petitioner availed loan to the tune of Rs. 3,00,000/-, for his family expenses from the respondent. In order to repay the said loan, the petitioner issued a cheque for the said sum and the same was presented for collection. It was returned for the reason that 'funds insufficient'. On receipt of the same, the respondent caused statutory notice. Though, the petitioner received the same, failed to give any reply notice.

3. In order to prove the charge against the petitioner, the respondent has examined himself as PW1 and marked documents as Ex.P.1 to Ex.P.7. On the side of the petitioner, he did not examine any witnesses and did not mark any documents, to disprove the case of the respondent herein.

4. Perusal of both oral and documentary evidence, the Court below found guilty and sentenced the petitioner to undergo imprisonment for period of one year rigorous imprisonment and also directed to pay compensation of Rs.3,00,000/-, under Section 357(3) of Cr.P.C.

5. Aggrieved by the same, the petitioner preferred an appeal and the same was confirmed by the first appellate Court. The learned counsel appearing for the petitioner would submit that the petitioner was not given opportunity to cross examine PW1 and he was not given opportunity to examine any witness on his behalf. The respondent is a stranger to the petitioner and he never meet the respondent at any point of time. The alleged cheque was not issued for any legally enforceable debt, since the petitioner has no legally enforceable debt to the respondent. There is material alteration in the alleged cheque, involved in this case, which was clearly established by the petitioner, during the trial. Even then, the Court below without considering the above facts, convicted the petitioner and sentenced him as stated supra.

6. Perusal of records reveals that the petitioner did not cross examine PW1, who is the respondent herein, who categorically deposed that on 28.02.2014, the petitioner borrowed a sum of Rs.3,00,000/- and has not repaid the same. The petitioner issued the cheque dated 25.09.2015, to the tune of Rs.3,00,000/-, which was marked as Ex.P.3. It was returned for the reason 'funds insufficient'. In pursuance of the same, the respondent caused legal notice, which was marked as Ex.P.5 dated 09.10.2015, which was also duly received by the petitioner and the acknowledgement card was marked as Ex.P.7. Even after receipt of the same, the petitioner failed to rebut the case of the respondent, by giving reply notice. Even after receipt of summons from the trial Court, the petitioner failed to rebut the case of the respondent. He did not even examine himself as a witness and did not cross examine PW1. Though, the learned counsel appearing for the petitioner has taken a specific stand that the respondent is



any legally enforceable debt, the petitioner failed to make any statement under Section 313 (1) (b) of Cr.P.C., before the trial Court. That apart, the appellant also failed to make any application before the first appellate Court to adduce additional evidence to support his contention. Therefore, the Court below rightly convicted and sentenced the petitioner for the offence under Section 138 of Negotiable Instruments Act, 1881. Hence, this Court finds no infirmity or illegality in the order passed by the Court below.

7. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

PNM

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Additional District and Sessions Judge,
Sivagangai, Sivagangai District
2. The Fast Track Court (Magisterial Level)
Karaikudi, Sivagangai District.

CrI.R.C. (MD) No.302 of 2020

**&
CrI.M.P (MD) Nos.2514 & 2516 of 2020**

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