



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.321 of 2020

&

Crl.M.P(MD)Nos.2725 & 2726 of 2020

WEB COPY

N.J.L.Traders through its Partner
Muthu Kumarasamy

... Petitioner

Vs

Rathna Kumari

... Respondent

Prayer: This Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C. to call for the records relating to the judgment dated 23.01.2020 made in C.A No.33 of 2019 on the file of learned III Additional District and Sessions Judge, Tirunelveli, partly confirming the judgment dated 14.02.2019 made in S.T.C No.632 of 2017 on the file of learned District Munsif cum Judicial Magistrate, Cheranmahadevi against the petitioner and set aside the same.

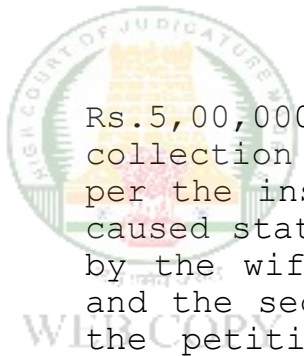
For Petitioner : Mr.R.Anbarasu

For Respondent : No appearance

O R D E R

This Criminal Revision Case has been filed challenging the judgment dated 23.01.2020 made in C.A No.33 of 2019, on the file of learned III Additional District and Sessions Judge, Tirunelveli, partly confirming the judgment dated 14.02.2019 made in S.T.C No.632 of 2017, on the file of the learned District Munsif cum Judicial Magistrate, Cheranmahadevi against the petitioner and set aside the same.

2.The petitioner is the first accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. The respondent lodged the complaint alleging that at the request of the petitioner herein, the respondent invested a sum of Rs.8,50,000/- in the NGL Traders and UJL Finance Firm, in which, the petitioner is one of the partner. After receipt of the same, the accused failed to return the amount to the investors within the stipulated time. When the respondent demanded to return the amount, in order to repay the part of the amount, the petitioner herein issued a cheque for a sum of



Rs.5,00,000/- along with interest. The said cheque was presented for collection and it was dishonoured for the reason 'Stop Payment' as per the instruction given by the drawer. Therefore, the respondent caused statutory notice on 19.06.2017 and the same was duly received by the wife of the petitioner herein, on behalf of the petitioner and the second accused also received the statutory notice. However, the petitioner and the second accused failed to repay the said amount. Hence, respondent lodged the complaint.

3.On the side of the respondent, he examined himself as PW1 and Ex.P.1 to Ex.P.7 documents were marked. On the side of the petitioner, he did not examine any witness and did not mark any documents. Perusal of both oral and documentary evidence, the trial Court found guilty of both the accused and sentenced them to undergo imprisonment for a period of one year and also awarded compensation of cheque amount under Section 357(3) of Cr.P.C. Aggrieved by the same, both the accused preferred an appeal and the first appellate Court acquitted the second accused and confirmed the conviction and sentence imposed by the petitioner herein.

4.The learned counsel appearing for the petitioner submitted that the alleged cheque was not issued for any legally enforceable debt by the petitioner herein. The alleged cheque was obtained only before the Deputy Superintendent of Police, Cheranmahadevi under threat. Even assuming that the alleged cheque was obtained from the petitioner under threat, no notice was issued by the petitioner as contemplated under Section 138 of Negotiable Instruments Act, that the alleged cheque was issued on behalf of the partnership firm viz., NGL Traders and UJL Finance Firm. According to the partnership deed dated 29.03.2016, the bank account or accounts in the name of partnership firm will be attested by the partners. The cheque and any other instruments will be signed jointly by the first petitioner and the second accused. The first petitioner and the second accused are partners have to sign in the cheque on behalf of the firm. In the alleged cheque, it was signed only by the petitioner herein, as such it is an invalid one. Knowing these facts very well the respondent presented the cheque that too, which was obtained under threat in front of the Deputy Superintendent of Police. Both the Courts below failed to consider these grounds and convicted the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act.

5.Perusal of records shows that though the petitioner has taken a specific ground that the cheque was obtained before the Deputy Superintendent of Police, Cheranmahadevi, that too under threat, the petitioner did not even lodge any complaint before the superior officers, even after the receipt of notice under Section 138 of Negotiable Instruments Act. The petitioner has failed to issue any notice and failed to lodge any complaint on the said allegations. Further, the petitioner knows very well about the operation of bank

<https://hcservices.mca.gov.in/hcservices/>



partners have to sign in the cheque for operation. The cheque was issued only by the petitioner even after knowing the fact that it should be signed by both the parties. However, the petitioner did not even cross examine any witness to rebut the case of the respondent herein. Therefore, once the issuance of cheque is proved and admitted by the accused, it should be presumed that the cheque was issued for consideration and discharge of legally enforceable debt either full or part. Bare denial of passing of consideration and existence of debt, apparently would not serve any purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the petitioner should bring on record such facts and circumstances, upon consideration of which, the Court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man under the circumstances of the case, act upon the plea that they did not exist. The petitioner failed to disprove the case of the respondent.

6. Therefore, the Court below rightly convicted and sentenced the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act and 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 (AE)

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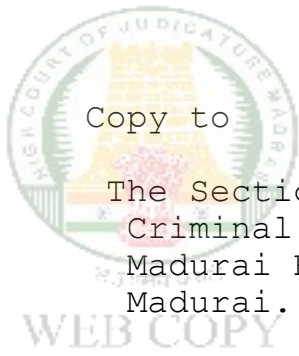
Sub Assistant Registrar(CS)

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 III Additional District and Sessions Judge,
Tirunelveli,
2. The District Munsif cum Judicial Magistrate,
Cheranmahadevi.



Copy to

The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.

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