



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.306 of 2020

and Crl.M.P.No.2555 of 2020

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S.Murugesan

... Petitioner

Vs

S.V.Palanisamy

... Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C. to set aside the judgment of conviction and sentence to undergo six months simple imprisonment and ordered to pay a compensation of Rs.2,21,000/- under Section 357(3) of Cr.P.C, within a period of one month, in default, to undergo one month Simple imprisonment, imposed by the learned Additional Sessions Judge, Karur in Criminal Appeal No.81 of 2019 dated 29.11.2019, confirming the conviction and sentence imposed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur, in C.C.No.316 of 2016 dated 01.08.2019.

For Petitioner : Mr.K.Suresh

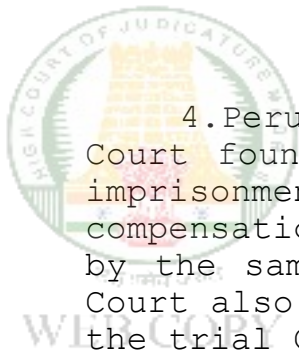
For Respondent : No appearance

O R D E R

This Criminal Revision Case has been filed challenging the conviction and sentence to undergo six months simple imprisonment and ordered to pay a compensation of Rs.2,21,000/- under Section 357(3) of Cr.P.C, within a period of one month, in default, to undergo one month Simple imprisonment, imposed by the learned Additional Sessions Judge, Karur in Criminal Appeal No.81 of 2019 dated 29.11.2019, confirming the conviction and sentence imposed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur, in C.C.No.316 of 2016 dated 01.08.2019.

2.The respondent lodged a complaint for the offence punishable under Section 138 of Negotiable Instruments Act, against the petitioner alleging that the petitioner borrowed a sum of Rs.1,50,000/- for his family expenses and for construction of house. In order to repay the said amount, he issued a cheque for a sum of Rs.2,21,000/- along with interest. When the said cheque was presented for collection and it was returned, for the reason 'funds insufficient'. After causing statutory notice, the respondent lodged the complaint.

3.On the side of the respondent, he examined himself as PW1 and Ex.P.1 to Ex.P.5 documents were marked. On the side of the petitioner, he did not examine any witness, did not mark any documents.



4.Perusal of both oral and documentary evidence, the trial Court found guilty of the petitioner and sentenced him to undergo imprisonment for a period of six months and also awarded compensation of cheque amount under Section 357(3) Cr.P.C. Aggrieved by the same, the petitioner preferred an appeal and the appellate Court also dismissed the same, by confirming the sentence imposed by the trial Court.

5.The learned counsel appearing for the petitioner submitted that there is no legally enforceable debt, payable by the petitioner. The petitioner had issued two cheques, in favour of the respondent, in which, the respondent presented one cheque for collection. It was not given for any legally enforceable debt, since already the loan amount, which was borrowed by the petitioner was duly paid by the petitioner. However, the respondent failed to return the cheques, which were given as security at the time of borrowal. Further, he has submitted that signatures in the cheque does not belong to the petitioner and he never filled the cheque, as alleged by the respondent. The petitioner also filed a petition under Section 45 of Cr.P.C., to verify the handwriting by the Hand Writing Expert and the same was dismissed and as such, the petitioner has taken a specific stand that the alleged cheque was not given for any legally enforceable debt.

6.Perusal of records reveals that though the petitioner had taken a specific stand that the loan amount borrowed from the respondent was duly repaid and however the respondent failed to return the cheques, which were given as security, the petitioner did not even examine any witness, to rebut the case of the respondent. That apart, the petitioner did not even lodge any complaint before the jurisdictional police for non returning of cheques, which were given at the time of borrowal of loan. Further, the petitioner also failed to issue stop payment for the alleged cheque, which was issued as security, in favour of the respondent herein. Except, the cross examination of PW1, the petitioner failed to rebut the evidence of respondent, in the manner known to law. On the contrary, the respondent has proved his case, by marking of documents viz., Ex.P.1 to Ex.P.5. It reveals that the petitioner has issued the cheque on 15.03.2015, it was presented and returned by the banker on 31.10.2015; the respondent caused statutory notice on 14.11.2015; it was duly received by the petitioner by acknowledgement on 16.11.2015. However, the petitioner failed to issue any reply notice and failed to examine any witness, to rebut the evidence of PW1. Therefore, the Court below rightly convicted the petitioner and the same was also confirmed by the first appellate Court. Hence, this Court finds no infirmity or illegality in the order passed by the Courts below.



7. Accordingly, this Criminal Revision Case stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

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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 Additional Sessions Judge, Karur.
2. The Judicial Magistrate,
Fast Track Court at Magisterial Level,
Karur.

Copy to

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

+1 CC to M/s.K. SURESH, Advocate (SR-16608[F] dated 05/04/2022)

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RK(29/04/2022) 3P 6C