



Crl.R.C.Nos.72 & 122 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on: 24.03.2023

Pronounced on : 11.04.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.R.C.Nos.72 & 122 of 2020
& Crl.M.P.No.4236 of 2023

Durgadevi,

... Petitioner/Accused
in Crl.R.C.No.72 of 2020

/versus/

Chandrasekaran,

... Respondent/Complainant
in Crl.R.C.No.72 of 2020

Prayer: Criminal Revision Petition is filed under Section 397 r/w 401 of Cr.P.C.,
pleaded to set aside the judgment dated 11.12.2019 passed by the Learned II
Additional District Judge, Tindivanam in C.A.No.88 of 2018 and C.C.No.2 of
2018 before the Learned Judicial Magistrate No.1, Tindivanam.

For Petitioner : Mr.M.Velmurugan,
for Mr.M.Govindaraju

For Respondent : Mr.V.V.Sairam



Crl.R.C.Nos.72 & 122 of 2020

Chandrasekaran,

... Petitioner/Complainant
in Crl.R.C.No.122 of 2020

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/versus/

Durgadevi,

... Respondent/Accused
in Crl.R.C.No.122 of 2020

Prayer: Criminal Revision Petition is filed under Section 397 r/w 401 of Cr.P.C.,
pleaded to set aside the order dated 11.12.2019 passed in C.A.No.90 of 2018 on
the file of the Learned II Additional District Judge, Tindivanam, Chennai, partly
confirming the sentence imposed in C.C.No.2 of 2018 dated 29.10.2018 on the file
of the Learned Judicial Magistrate No.1, Tindivanam and direct to enhance the
compensation to Rs.50,00,000/- to the petitioner/complainant.

For Petitioner : Mr.V.V.Sairam

For Respondent : Mr.M.Velmurugan,
for Mr.M.Govindaraju

COMMON ORDER

These two Criminal Revision Cases are filed by the parties to the criminal
complaint arising under Section 138 of N.I Act, involving a cheque dated
07/03/2016 for Rs.50,00,000/- (Rupees Fifty Lakhs) drawn on Indian Bank,
P.K.I.E.T Branch, Serumavilangai Nedungadu, Karaikal, issued by Smt.Durgadevi
in favour of Chandrasekaran. The subject cheque when presented for collection on



14/03/2016, same was returned for the reason “Fund insufficient”. The drawee Chandrasekaran caused statutory notice to the drawer on 15/03/2016 calling upon her to pay the cheque amount within 15 days or to face the criminal prosecution. The drawer Durgadevi through her Lawyer replied on 22/03/2016 admitting money transaction, denied enforceable liability and alleged that the blank cheques issued during the money transaction in the year 2014 and 2015 when she borrowed Rs.10 lakhs from the complainant and that cheque been misused. Thereafter, for non-payment of the cheque amount after its return for insufficiency of fund and on expiry of 15 days from the date of receipt of the notice, the Chandrasekarn filed complaint before the Judicial Magistrate No.III, Pondicherry and it was taken on file as S.T.C.No.157/2016. Subsequently, on petition by the complainant Chandrasekaran, the case was transferred to Judicial Magistrate-1, Tindivanam, by order of the High Court passed in Crl.O.P.No.820/2018, dated 11/01/2018.

2. On transfer, the complaint was renumbered as C.C.No.2 of 2018 and tried by Judicial Magistrate No.I, Tindivanam. Before the Trial Court, Chandrasekaran/the complainant was examined as P.W-1, the Manager of his



Bank Mr.Hemachandran was examined as P.W-2. On the side of the complainant, 13 documents were marked. Durgadevi-the accused chose not to examine any witness or to mark any document on her side. The trial Court, on appreciation of the evidence available, held Durgadevi/accused guilty of offence punishable under Section 138 of N.I Act and sentenced her to undergo 1 year S.I and to pay fine of Rs.10,000/-, in default one month S.I.

3. Being aggrieved by that, the accused Durgadevi filed C.A.No.88/2018 before the Principal District and Session Judge, Villupuram against the order of conviction and sentence passed by the trial Court. The Complainant Chandrasekaran filed appeal against the judgment for not awarding compensation under Section 357(3) Cr.P.C for him since he is monetarily affected by the action of the accused. Both the appeals were heard together and the Appellate Court dismissed the appeal in C.A.No.88 of 2018 preferred by the accused. Partly allowed the Crl.A.No.90/2018 preferred by the complainant. Thereby, the trial Court judgment of conviction confirmed. The sentence was modified by enhancing the fine amount to Rs.5,10,000/-, out of which Rs.5,00,000/- ordered to be paid as compensation to the complainant. The said common order of the Lower Appellate



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Court dated 11/12/2019 is tested before this Court by these criminal revision cases.

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4. The complainant-Chandrasekaran is the respondent in Crl.R.C.No.72 of 2020 and the Revision Petitioner in Crl.R.C.No.122 of 2020. The accused Durgadevi is the Revision petitioner in Crl.R.C.No.72 of 2020 and the respondent in Crl.R.C.No.122 of 2020. For the sake of brevity they are referred as complainant and accused respectively.

5. The case of the complainant as found from his complaint, notice and evidence relied by him is that the accused received loan of Rs.10 lakhs on 16.04.2014; a sum of Rs.20 lakhs on 18.04.2015 and another sum of Rs.20 lakhs on 13.08.2015. All these three payments totally for a sum of Rs.50 lakhs was transferred through Bank. To repay the money, on 18.04.2015, the accused executed a pro-note for a sum of Rs.50 lakhs with 24% interest. To discharge the said loan, the accused gave a cheque (Ex.P.1) dated 07.03.2016. The said cheque on presentation returned with a memo stating “insufficient fund”. The said return memo marked as Ex.P.2. The statutory notice (Ex.P.3) dated 15.03.2016 was caused to the accused and same was received by the accused. The accused gave



reply notice (Ex.P.6) dated 22.03.2016 denying the liability.

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6. The Manager of Indian Bank, P.K.I.E.T Branch, (P.W.2) had spoken about the account maintained by the accused and the complainant. He has deposed referring the statement of accounts of the complainant and the statement of accounts of the accused maintained at Indian Overseas Bank which she has obtained for the purpose of this case, which are marked as Ex.P.7 to Ex.P.13.

7. The accused had denied the liability to pay the cheque amount through her reply notice marked as Ex.P.6. According to the accused, there was money transaction between her and the complainant for that, she has given blank cheques and blank signed papers those signed documents has been misused by the complainant. Her further defence is that, a suit for specific performance in respect of the property been filed against her by the complainant and the partial sale consideration for that property advanced to her been shown as money lend by him. The blank cheque given as security has been filled by the complainant to enrich himself illegally. Contending that, non-production of the pro-note alleged to have executed by the accused on 18.04.2015, for Rs.50 lakhs with 24% interest is fatal



to the case of the complainant. Further, it was contended that the cheque (Ex.P.1) and the alleged letter acknowledging the debt which is marked as Ex.P.5 are printed documents using the computer and the sign alone in the cheque (Ex.P.1) and the letter Ex.P.5 are admitted but not the content. However, the Courts below has not accepted the defence and held the accused guilty.

8. As far as the sentence is concerned, the trial Court sentenced the accused to undergo S.I for 1 year and to pay fine of Rs.10,000/-. Whereas, on Appeal, the appeal filed by the accused was dismissed and the appeal filed by the complainant for compensation was partly allowed by awarding compensation of Rs.5,00,000/- lakhs payable to the complainant in addition to the fine of Rs.10,000/-.

9. The Learned Counsel appearing for the accused/appellant submitted that in the complaint, it is stated that, accused executed a pro-note dated 18.04.2015 for Rs.50 lakhs with promise to repay it with 24% interest. Even according to the complaint, on the date of the pro-note only Rs.10 lakhs on 16.04.2014 and Rs.20 lakhs on 15.04.2015 was paid by him to the accused. So no necessity to give a pro-note for Rs.50 lakhs on 18.04.2015. Hence, the alleged pro-note for Rs.50



lakhs not produced since its production will belie the case of the complainant which fact not taken note by the Courts below. Further, the Counsel submitted that, it is also admitted by the complainant in the cross examination that, he has filed the suit in O.S.No.16 of 2016 before the Civil Court, Karaikal for specific performance in connection with sale agreement dated 14.05.2015 and admitted that the alleged pro-note executed on 18.04.2015 as averred in the statutory notice and the complaint is a typographical error to justify non-production of the pro-note not been taken note by the Courts below.

10. It is also contended by the Learned Counsel appearing for the accused that the blank cheques and signatures obtained in unfilled A4 size white papers been misused by the complainant, to create the subject cheque Ex.P.1 and the alleged letter acknowledging the debt Ex.P.5 respectively. Both these documents unusually not written in hand but computer print out which could be done only by a professional. The complainant been a retired Senior Bank Officer, had conveniently filled up those blank documents to make unjust enrichment. The documents on the face of it will indicate the signatures were obtained prior to filling up with the documents. The space, gaps and even a informal letter alleged to



have been written by the accused, being in a computer print with her signature on the right bottom of the paper. This ought to have created suspicion on the minds of the Courts below to hold these documents are concocted. Unfortunately, the Courts below erred in not taking note of the fact that the complainant has failed to prove the foundational fact of borrowing Rs.50,00,000/- and subject cheque marked as Ex.P.1, issued for discharge of said debt. The Courts below failed to see that the complainant has taken advantage of certain payments made in connection with the agreement dated 14.05.2015. Admittedly, the accused and the complainant had various money transaction including an agreement to sale and borrowing of Rs.10 lakhs as loan. In order to extract money, the documents signed and given as a security been grossly misused by filing various complaints under Section 138 of N.I against her husband and mother-in-law, for tune of Rs.1,30,00,000/- and also a suit for specific performance based on an agreement obtained under threat and force.

11. Though, the submissions made by the learned Counsel for the petitioner/accused superficially appears to be a probable defence in a case under Section 138 of N.I Act, to shift the onus of proof and rebut the presumption.



Unfortunately, several facts canvassed by way of argument not to manifested through documentary or oral evidence. The accused had failed to mark any document or let in evidence in her support before the trial Court to substantiate these defences. Pending appeal, the accused had taken out an application to raise additional grounds but even then, has not filed any document or sought leave of the Appellate Court to let in additional evidence.

12. At the stage of revision, certain documents produced before this Court to convince that the subject cheque was not issued for discharge of existing liability of Rs.50,00,000/-. The Learned Counsel also submitted that, based on the sale agreement obtained under coercion, decree of specific performance been obtained by the complainant. No doubt, the complainant had failed to produce the alleged pro-note executed by the accused on 18.04.2015 as stated in the complaint. Further, admittedly there is few other transactions between the accused and the complainant in respect of an immovable property apart from the admitted borrowal of Rs.10 lakhs. In the said circumstances, there is a substantial reason to doubt whether the cheque for Rs.50,00,000/- was issued to discharge the existing debt or the said cheque Ex.P.1 was given in blank and later filled up through computer



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printer as alleged by the accused. The recital found in letter Ex.P.5 which alleged to have been acknowledgement of the debt also carries certain statements which may not normally be said in a formal communication. However, while exercising the Revisional Jurisdiction if two views are possible, the revisional Court cannot substitute his view contrary to the views taken by the Courts below which is also equally possible and probable. Unless the legality of the said finding is perverse. As far as the claim of enhanced compensation made by the complainant, the same logic and reasoning for dismissing the appeal against conviction applies.

13. In the said circumstances, both the revision cases are dismissed, holding that the finding of guilt against the accused for issuing a cheque without balance is valid and the sentence of imprisonment with compensation as modified by the Appellate Court is proportionate, which needs no interference. Hence, the ***Criminal Revision Cases are dismissed.*** Consequently, miscellaneous petition is closed.

11.04.2023

Index :Yes/No.
Neutral Citation :Yes/No.
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Dr.G.JAYACHANDRAN,J.



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To,

1. The Learned II Additional District Judge, Tindivanam.
2. The Judicial Magistrate No.1, Tindivanam.

Pre-Delivery common order made in
Crl.R.C.Nos.72 & 122 of 2020

11.04.2023