



Crl.R.C.No.71 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.04.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.71 of 2020
and
Crl.M.P.Nos.389 & 390 of 2020

P.Arumugam

.. Petitioner

Vs.

N.R.Kallisamy

..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the judgment of the V Additional District & Sessions Judge, Coimbatore in Crl.A.No.45 of 2018 dated 04.09.2019 confirming the conviction passed by the Judicial Magistrate, Fast Track Court No.I @ Magisterial Level, Coimbatore by the judgment in C.C.No.80 of 2014 dated 12.01.2018.

For Petitioner : Mr.R.John Sathyan, Senior Counsel

For Respondent : Mr.S.S.Mathivanan



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ORDER

This Criminal Revision Case is filed challenging the concurrent findings of the Courts below holding the revision petitioner/accused guilty of offence under Section 138 of Negotiable Instruments Act.

2. The case of the complainant, who is the respondent herein, is that the revision petitioner borrowed a sum of Rs.2,30,000/- from him and to discharge the debt, he gave a cheque dated 10.12.2012 bearing No.208864 drawn on ICICI bank, Coimbatore branch. When the cheque was presented for collection by the respondent, the same was returned with an endorsement “Insufficient Fund” vide memo dated 12.12.2012. On return of the cheque, statutory notice dated 20.12.2012 was issued to the drawer of the cheque and the said notice was received on 21.12.2012 and a reply notice was given on 09.01.2013. Since the liability was denied in the reply notice and the cheque amount was not paid by the drawer, a private complaint under Section 138 of N.I.Act has been filed and same was taken on file by the learned Judicial Magistrate No.I, Coimbatore in S.T.C.No.625 of 2013, later, it was transferred to the Fast



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Track Court No.I, Coimbatore and re-numbered in C.C.No.80 of 2014.

3. To prove the complaint, the complainant/respondent mounted in the witness box and marked 7 exhibits. In defence, one Samuel Arthur and the accused/revision petitioner herein were examined as DW.1 and DW.2 and 3 exhibits were marked.

4. The sum and substance of the case considered and decided by the Courts below is that the evidence let in by the complainant, who has issued the cheque bearing No.208864 for Rs.2,30,000/-. The said cheque was marked as Ex.P1 and it was returned for the reason Insufficient Fund, that is proved by Ex.P2-Memo from the complainant's bank. The statutory notice issued by the complainant is marked as Ex.P3 which say that the cheque was issued to discharge the liability arose when the petitioner borrowed the said amount as hand loan on 08.04.2013, while he has working in the company by name M/s.Aquasub Engineering Foundry Division, Thudiyalur, Coimbatore and the reply marked as Ex.P5 and also Ex.D3 by the accused.



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5. It has been contended that they both are relatives and working in the same firm and due to proximity there was some money transaction, a sum of Rs.2,30,000/- as claimed in the notice. The revision petitioner has admitted that he received Rs.60,000/- from the complainant/respondent and agreed to repay the money with interest at the rate of 36% per annum and he was regularly paying Rs.1,800/- every month towards interest. At the time of borrowing, he gave a signed blank cheque and the said cheque has been now misused. In the reply notice it is also admitted that during the month of June 2005, he borrowed another sum of Rs.3,000/-, interest upto June 2006 was paid and towards principal amount a sum of Rs.40,000/- paid. Only Rs.23,000/- due towards principal. However, since there was a demand of exorbitant amount of Rs.2,00,000/- to settle the issue and the same was refused by the accused/revision petitioner, the said cheque given as a security been filled up. Apart from his reply notice, the main defence taken by the accused in the course of trial and in the appeal as against the revision petitioner is that while the subject cheque was given as a security on



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borrowing Rs.60,000/- another cheque bearing No.208863 was given to the complainant/respondent and that the cheque after filling it was subsequently presented for Rs.60,000/- dated 22.09.2014 knowing that the revision petitioner/accused has received bonus. The said cheque was filled and presented for collection and duly encashed. While so, the probability that the cheque with subsequent number that is 208864 with earlier for Rs.2,30,000/- dated 10.12.2012 is highly improbable.

6. The learned Senior Counsel for the revision petitioner submitted that the reply notice as well as in the cross examination of PW.1, it has been elucidated that the cheque is the subject matter of the present revision petition and that was presented on 18.01.2013, whereas another cheque by the complainant for a sum of Rs.60,000/- was encashed on 22.09.2014. Having admitted that after instuting the criminal complaint, a subsequent cheque given by the accused been encashed would highly probabalise the case of the defence that for the money transaction which took place long back, two cheques were given as security being misused by the complainant. Particularly, when there is



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a dispute regarding the cheque which was presented 1 ½ years ago earlier, the subsequent cheque which was honoured for a sum or Rs.60,000/-, either should have been to discharge the earlier debt or it should have been a blank cheque given as security as projected by the accused. Either way, the complainant is not entitled for any presumption under the statute, since the onus of burden been shifted by preponderance of probability.

7. This Court might have accepted the submission of the learned Senior Counsel appearing for the accused had the accused disclosed about giving two blank cheques at the time of initial borrowing in the reply notice. Whereas in the reply notice, there is no whisper about the blank cheques with the complainant. If really blank cheque given earlier was encashed subsequently after lodging the complaint, this fact ought not to have been omitted to mention in the reply notice. Therefore, this Court concurs with the judgment of the Courts below by holding that the complainant has proved the case and the attempt of the accused to rebut the statutory presumption has failed



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8. Insofar as the sentence is concerned, it is contended that the money borrowed as a hand loan with an exorbitant interest at the rate of 36% now attempted to be realised through the blank cheque. When this question was posed to the complainant, he has denied that the accused borrowed only Rs.60,000/- for interest at the rate of 36%.

9. Taking note of the fact that the accused and the complainant are related to each other and working in same place, sentence is modified to the effect that the revision petitioner/accused shall undergo S.I., for a period of one month and to pay a compensation of Rs.2,30,000/- within a period of 2 months, in default, he shall undergo Simple Imprisonment for further period of 1 month.

10. With this modification, this ***Criminal Revision Case is partly allowed***. Consequently, the connected Criminal Miscellaneous Petitions are also closed.

11. The period of imprisonment will be given effect, if the



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accused/respondent failed to pay the compensation amount within 15 days from the receipt of the order. This concession is granted in view of the plea made by the learned Senior Counsel to consider the provision under chapter XXI of Cr.P.C., and Section 147 of the N.I.Act. Though strictly the accused has not come forward to plea bargain to meet the ends of justice, this Court postpone the effect of imprisonment order by 15 days from today. If the accused come forward to pay the compensation money of Rs.2,30,000/- within a period of 15 days, then he shall not be required to undergo Simple Imprisonment for a period of one month.

10.04.2023

Internet : Yes/No

Index: Yes/No

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To

1.The V Additional District & Sessions Judge, Coimbatore.

2.The Judicial Magistrate, Fast Track Court No.I @ Magisterial Level, Coimbatore

Dr.G.JAYACHANDRAN, J.

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