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Crl.R.C.No.223 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.04.2023

CORAM :

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

Crl.R.C.No.223 of 2020

S.Visweswaran

.. Petitioner

Vs.

1.R.Padmanabhan

2.The State represented by  
The Public Prosecutor,  
The Nilgiris District.

..Respondents

**PRAYER :** Criminal Revision Case has been filed under sections 397 read with 401(2) of Criminal Procedure Code to set aside the judgment made in C.A.No.54 of 2015 on the file of the Sessions Judge of Magalir Neethimandram (FTMSC), Uthagamandalam, the Nilgiris, dated 06.12.2019 confirming the judgment made in C.C.No.468 of 2011 on the file of the Fast Track, Judicial Magistrate at Coonoor dated 06.06.2015.

For Petitioner : No appearance

For R1 : Mr.N.Ponraj

For R2 : Mr.R.Kishore Kumar  
Government Advocate (Crl.Side)



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## **ORDER**

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

2. The sum and substance of the complaint is that the revision petitioner in order to repay the debt gave a cheque bearing No.815411 dated 23.07.2009 drawn on M/s.Corporation Bank, Coonoor branch in favour of the complainant. When the said cheque was presented for collection, it was returned with an endorsement “Insufficient of funds”. Hence the complainant issued a statutory notice to the accused calling upon him to pay the cheque amount within a period of 15 days or else the prosecution under Section 138 of N.I.Act will be initiated against him. The said notice dated 30.07.2009 was received by the accused on 01.08.2009 and he gave a reply dated 12.08.2009 through his counsel. Since he has denied the liability in his reply, complaint was filed before the learned Fast Track Judicial Magistrate, Coonoor and same was taken on file in C.C.No.468 of 2011.



3. Before the Trial Court, the complainant mounted the witness box examined himself as PW.1 and in support of his complaint 5 documents were marked. The accused in defence has not let in any oral or documentary evidence, however relying upon his reply notice and facts elucidated in the cross examination of PW.1, contended that the said cheque was not issued to the complainant for discharge of debt owe to him and in fact, it was given in blank to one Dr.Chandrasekaran in the year 2002, when he and Dr.Chandrasekaran had money transaction. Later on, the accused and Dr.Chandrasekaran arrived at a settlement and as a result Dr.Chandrasekaran agreed to return the blank cheques given as security. However, he did not return the cheque, but it has been misused by the complainant, who was working under him as compounder, to file the criminal complaint after filling up the blank cheque.

4. This contention as defence by the accused was not found favoured by the Trial Court, since there was no evidence to substantiate the said claim. The Trial Court found the accused guilty of offence under Section 138 of N.I.Act. It convicted and sentenced him to undergo one



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year S.I., and to pay fine of Rs.2,000/-, in default one month S.I.

5. Canvassing the same defence, the aggrieved accused preferred an Appeal before the Sessions Judge at Nilgiris. The said Appeal was taken on file in C.A.No.54 of 2015. The lower Appellate Court, after appreciating the evidence and the defence that the cheque was not given to the complainant but given to one Dr.Chandrasekaran in the year 2002 and comparing the other cheques with the subsequent numbers, which was presented in the year 2002 itself, concluded that the accused not able to rebut the presumption against him even by preponderance of probability, since no evidence let in by him to substantiate the fact that the subject cheque bearing No.815411 was issued as a security to Dr.Chandrasekaran in the year 2002. Hence the appeal was dismissed confirming the judgment and conviction imposed by the Trial Court.

6. In the revision petition, it is again contended that the cheque was issued only to Dr.Chandrasekaran and it was a blank cheque given to him for the money transaction occurred in the year 2002. The cheque



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bearing No.815411 to 815416 were given to Dr.Chandrasekaran, who in turn presented one cheque alone for collection and initiated criminal prosecution, after the said cheque got bounced. The criminal prosecution ended in conviction and the appeal filed by the accused also confirmed. In the said circumstances, the accused, who preferred revision petition before the High Court entered into compromise in the mediation and compounded the offence. In the terms of compromise, Mr.Krishnamoorthy has referred to the other cheques including the cheque number 815411, which is the subject matter of the present revision petition.

7. Though plea has been taken that the cheque which is subject matter of the present Revision Petition is not given to the complainant to discharge debt, the accused has not produced any documents to substantiate this plea. Particularly, when he contend that in the compromise memo Dr.Chandrasekaran has referred about the subject cheque, without examining Dr.Chandrasekaran or filing the said compromise memo, the said defence taken by the accused shall have no



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consequence. The signature found in the cheque is admitted and the reason for issuing the cheque though denied, no evidence let in to substantiate to the said reason.

8. In the said circumstances, this Court finds no merit in the revision petition. Therefore, it is liable to be dismissed. Accordingly, this Criminal Revision Case is dismissed. The conviction and sentence awarded by the Trial Court is hereby confirmed. It is made clear that the period of incarceration undergone by the appellant / accused during the course of investigation / trial is ordered to be set-off under section 428 Cr.P.C.

**12.04.2023**

Internet : Yes/No

Index: Yes/No

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To

1.The Magalir Neethimandram (FTMSC), Uthagamandalam, the Nilgiris

2.The Fast Track, Judicial Magistrate at Coonoor.

**Dr.G.JAYACHANDRAN, J.**



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