



Crl.R.C.No.1197 of 2023
and Crl.M.P.9346 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

THE HONOURABLE MRS. JUSTICER. **HEMALATHA**

Crl.R.C.No.1197 of 2023
and Crl.M.P.No.9346 of 2023

E.Sivasankar

... Petitioner

vs.

P.Thangavel

... Respondent

Prayer : Criminal Revision filed under Section 397 & 401 of Criminal Procedure Code to set aside the order passed in Crl.A.No.22/2019 dated 02.12.2019 passed by learned Principal Sessions Judge, Krishnagiri and further remand back the Crl.A.No.22/2019 to the Principal Sessions Judge to disposal of the case on merits and pass suitable other orders.

For Petitioner : Mr.P.Muthamizh Selvakumar

For Respondent : Mr.J.Hariharan

for M/s.Law Firm



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ORDER

Challenging the judgment and orders passed by the Principal Sessions Judge, Krishnagiri in Crl.A.No.22/2019 dated 02.12.2019, the present revision has been filed by the revision petitioner/accused in S.T.C.No.171/2017 on the file of the Judicial Magistrate No.II, Krishnagiri.

2.The case of the respondent/complainant is that he and the revision petitioner/accused are friends and that the accused is the proprietor of Shiva Traders. On 05.12.2016, the accused/revision petitioner borrowed a sum of Rs.6,00,000/- from the complainant to meet his family needs and also assured the latter to repay the same within a month. In order to discharge the debt, the present revision petitioner/accused issued a post dated cheque bearing No.037555 dated 06.01.2017 (Ex.P1) for a sum of Rs.6,00,000/- to the respondent/complainant drawn on Corporation Bank, Boodimutlu Branch. When the complainant presented the said cheque for collection



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through his banker, namely, Corporation Bank, Boodimutlu Branch, the same was returned on 06.01.2017 (Ex.P2) for the reason "Account Closed". Therefore, the respondent/complainant issued a legal notice dated 23.01.2017 (Ex.P3) calling upon the revision petitioner/accused to pay the amount due under the cheque. The said notice was returned unserved with a postal endorsement 'Addressee Out of Station'. Thereafter, he filed a private complaint before the Judicial Magistrate No.II, Krishnagiri under Section 200 Cr.P.C. against the present revision petitioner for the offence punishable under Section 138 of Negotiable Instruments Act in S.T.C.No.171/2017. Summons was issued to the accused/revision petitioner and on his appearance copies of records were furnished under Section 207 Cr.P.C. When the revision petitioner/accused was questioned with regard to the substance of the accusation, he denied the same and the case was posted for trial. The complainant examined himself as PW.1 and marked Ex.P1 to Ex.P5. The accused was questioned under Section 313 (1) (b) Cr.P.C. with regard to the incriminating circumstances appearing in evidence against him. The accused denied having committed the offence. He examined himself as



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3.After analysing the evidence on record, the learned trial court judge found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced the revision petitioner to undergo one year simple imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for two months as per Section 255 (2) Cr.P.C.

4.Aggrieved over the same, the accused filed an appeal in Crl.A.No.22/2019 before the Principal Sessions Court, Krishnagiri. Learned Principal Sessions Judge, Krishnagiri directed the present revision petitioner to deposit 20% of the compensation amount before taking up the case for arguments. Since the revision petitioner did not deposit the amount, the appeal was dismissed by the learned Principal Sessions Judge, Krishnagiri vide her orders dated 02.12.2019.



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5. Heard Mr.P.Muthamizh Selvakumar, the learned counsel for the revision petitioner and Mr.J.Hariharan, the learned counsel for the respondent.

6. Mr.Muthamizh Selvakumar, learned counsel for the revision petitioner contended that the total cheque amount is Rs.6,00,000/- and that the revision petitioner is ready to pay Rs.2,00,000/- to the respondent/complainant.

7. Mr.Hariharan, learned counsel for the respondent did not raise any objection to this.

8. A perusal of the orders passed by the First Appellate Court shows that the First Appellate Court did not dispose of the criminal appeal on merits. The trial Court had directed the accused to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for a period of two months. However, the First Appellate Court had passed the following orders:

“This appeal came up today for deposit of 20% of compensation amount, Appellant counsel did not deposit the amount inspite of repeated demands, Appellate called



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9. In these circumstances, this Court is of the view that the case has to be remitted back to the Appellate Court. The judgment and orders passed by the Appellate Court is therefore, set aside and the Appellate Court is directed to take Crl.A.No.22/2019 on file and hear both the parties on merits and pass judgment on merits in accordance with law. In the meanwhile, the revision petitioner/accused is directed to pay a sum of Rs.2,00,000/- to the respondent /complainant directly as assured by him.

10. In the result, this Criminal Revision Petition is disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

19.07.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

R. HEMALATHA, J.



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mtl

To

- 1.The Principal Sessions Judge, Krishnagiri.
2. The Judicial Magistrate No.II, Krishnagiri.
- 3.The Section Officer, Criminal Section, High Court, Madras.

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