



Crl.R.C.No.191 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.03.2023

CORAM :

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

Crl.R.C.No.191 of 2020
and
Crl.M.P.Nos.1436 & 1437 of 2020

E.Chelladurai

.. Petitioner

Vs.

1.B.Varadharajan

2.The State

Represented by Public Prosecutor,
Coimbatore.

.. Respondents

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the Judgment passed by the learned III Additional District and Sessions Judge, Coimbatore in C.A.No.200 of 2017 dated 06.11.2019, confirming the Judgment of the Judicial Magistrate No.1 of Pollachi in STC.No.2219 of 2015 dated 06.07.2017.

For Petitioner : Mr.P.Kalimuthu

For R1 : No appearance

For R2 : Mr.S.Udayakumar
Government Advocate



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ORDER

This Criminal Revision is filed against the concurrent findings of the Courts below holding the revision petitioner guilty of offence under Section 138 of Negotiable Instruments Act for issuing the cheque for Rs.70,000/- to the complainant, however the said cheque on presentation was returned with an endorsement “Drawer signature differs”.

2. The sum and substance of the case is that as a hand loan, the revision petitioner received Rs.70,000/- from the respondent, and to discharge the said loan, he gave a post dated cheque. When the cheque was presented on 24.07.2015 for collection, it got returned with an endorsement “Drawer signature differs”. Immediately, statutory notice was given by the complainant on 09.09.2015, and the same was received by the accused on 14.09.2015, but he has not replied. Hence, the complaint.

3. In the course of trial, the complainant mounted the witness box and was examined as P.W.1. To prove his complaint, he has marked Exs.P1 to P4. Ex.P1- Cheque dated 27.08.2015. Ex.P2-Bank memo dated 27.08.2015, with endorsement “signature of the drawer



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differs". Ex.P3-Statutory notice, dated 09.09.2015. Ex.P4 – the postal acknowledgement card, to prove that the statutory notice was received by the accused on 14.09.2015. On examination in chief by way of proof affidavit, he marked the above four documents. The accused has taken time to cross examine the complainant but failed to do so inspite of several adjournments. Hence, the Trial Court has closed the complainant side evidence and proceeded with the trial. Thereafter, the accused has filed a petition to recall the witness and the said application was allowed and the matter was adjourned for cross of P.W.1. The Trial Court has recorded the dates of adjournment as 27.08.2016, 07.10.2016, 06.01.2017 and 02.03.2017. However, the accused did not come forward to cross examine P.W.1 inspite of granting adjournment and therefore, the evidence on the side of the complainant was closed and the matter was posted for defence side evidence. Again, time was granted for defence side evidence on 03.03.2017, 14.03.2017, 28.03.2017 and 04.04.2017. The accused did not adduce any evidence hence his side evidence closed and was questioned under Section 313 of Cr.P.C and thereafter, the Court proceeded to appreciate the evidence and found the accused guilty and



sentenced him to undergo one year simple imprisonment and pay a compensation of Rs.1,40,000/- within two months. On appeal, the Lower Appellate Court, after re-appreciation of the evidence, confirmed the Trial Court's Judgment and dismissed the appeal.

4. The learned counsel for the revision petitioner submitted that no opportunity was given to the accused to putforth his defence and further more the cheque was returned not on the ground of “insufficient funds” but on the ground that “signature differs”. Therefore, the accused cannot be prosecuted under Section 138 of Negotiable Instruments Act. Further he would submit that the presumption of legally enforceable debt ought not to have been drawn since the fundamental facts of legally enforceable debt had not been proved by the complainant.

5. This Court, on perusing the records, finds that both the grounds raised by the revision petitioner are not sustainable. As far as the return of cheque, as signature differs, the Trial Court as well as the Appellate Court has observed that the accused had intentionally signed in different ways in order to cheat the complainant and such conduct will also fall under Section 138 of Negotiable Instrument Act. Since the accused



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could not explain about the difference in the signature, this Court concurs with the view expressed by the Courts below. In cases of this nature, the bank finds that the signature found in the cheque does not tally with the specimen signature kept in the bank, there is only two possibilities, either the cheque ought not to have been issued by the account holder, or the account holder would have given the cheque but have signed differently. In either case, the account holder is bound to explain when the said fact is brought to his attention by way of statutory notice. The accused, in this case, had received the statutory notice and the acknowledgement card – Ex.P4 indicates that the notice was received on 14.09.2015. However, he has not replied to the statutory notice. Atleast, when P.W.1 was in the witness box he should have availed the opportunity to cross examine and putforth his defence. Unfortunately, he has not availed that opportunity also. He has not let in evidence on his side to prove whether the cheque was issued by him or not. Having failed to putforth his defence, the presumption under Section 139 of the Negotiable Instrument Act squarely gets attracted. Therefore, this Court finds no error in the judgment of the Courts below.



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6. The learned counsel appearing for the petitioner would submit that the accused is the sole bread winner and suffers from all the disease and requested for leniency in the punishment.

7. This Court, taking into account the said submission, modifies the sentence from one year simple imprisonment to three months simple imprisonment. Compensation of double the cheque amount ordered by the Court below is confirmed.

8. In the result, this Criminal Revision Case is partly allowed. Consequently, connected Miscellaneous Petitions are closed.

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Internet : Yes/No

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To



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1. The III Additional District and Sessions Judge,
Coimbatore.

2. The Judicial Magistrate No.I,
Pollachi.

3. The Public Prosecutor,
High Court of Madras, Chennai.

Dr.G.JAYACHANDRAN, J.



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