IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2023

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THE HONOURABLE DR. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.Nos.177 & 178 of 2020

R.Munusamy ... Petitioner in both Crl.O.Ps.

Vs.

Saraswathy ... Respondent in Crl. O.P.No.177 of 2020

Geetha ... Respondent in Crl. O.P.No.178 of 2020

COMMON PRAYER: Criminal Revision cases have been filed under Section 397 r/w 401 of Cr.P.C., to set aside the order dated 03.10.2019 passed in C.A.Nos.186 & 187 of 2017, respectively, by the learned Principal Sessions Judge, Tiruvallur, confirming the order in S.T.C.Nos.349 & 347 of 2015 dated 01.11.2017 on the file of the learned Judicial Magistrate, Fast Track Court, Magistrate Level II, Poonamallee.

In both Crl.O.Ps.

For Petitioner : Mr.T.Saravanan

For Respondent : No appearance

COMMON ORDER

These revision petitions are directed as against the concurrent findings of the Courts below holding the accused guilty for issuance of two cheques one for Rs.1,91,000/- in favour of Saraswathi, W/o. Arumugam and another for Rs.2,00,000/- in favour of Geetha, D/o.Parasuraman.

2. The case of the complainants is that one Fathima was running unregistered chit in which the complainants Saraswathi and Geetha were subscribers. The chit amount to the tune of Rs.3,91,000/- was not paid and therefore Fathima was asked to pay the money. When Fathima failed to pay, Saraswathi and Geetha gave a complaint before the Inspector of Police, Thiruverkadu Police Station. At that time, the accused, who was the Manager in the company, where the said Fathima was also working, gave an undertaking that he will discharge the debts of Fathima within the time prescribed by paying Rs.10,000/- per month and as a security has given two cheques. Having failed to honour his promise, the cheques were presented, however returned with endorsement "insufficient fund".

3. The complainant viz., Saraswathi in S.T.C.No.349 of 2015

and the complainant viz., Geetha in S.T.C.No.347 of 2015 had mounted the witness box and been examined as P.W.1. Seven exhibits in each case were marked. The cheque, return memo, legal notice, acknowledgment card, the letter of undertaking of the accused addressed to the Inspector of Police, Thiruverkadu Police Station, and the acknowledgment of liability given by Fathima were relied by the complainants to prove the enforceable debt.

4. The Courts below held the accused having admitted the issuance of cheques on behalf of Fathima and the said Fathima having admitted her liability to the complainants, the complainants have proved that the subject cheques were issued to discharge an enforceable liability.

5. The learned counsel appearing for the revision petitioner would submit that the findings of the Courts below perverse and illegal. Section 138 of the NI Act mandates that the cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in

whole or in part, of any debt or other liability, is returned by the bank unpaid, the said act is punishable with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both. Whereas, the letter of undertaking given by the accused and the acknowledgment given by the said Fathima which are marked as Ex.P.6 and Ex.P.7 respectively in the both cases, read together, would clearly show that the cheques were obtained in the Police Station from the accused as a security and by any stretch of imagination, it would be considered as given to discharge debt or liability. Further the learned counsel appearing for the revision petitioner would submit that the Courts below failed to take note of the defence documents marked as Ex.D.1 to Ex.D.4 which would probabalize the defence case.

6. The learned counsel appearing for the revision petitioner pointing out that in the absence of passing of pleading regarding consideration and failure to prove the passing of consideration, the presumption drawn by the Courts below is erroneous. Further the

accused through the defence documents and oral evidences has probabalised that there was no passing of consideration and the cheques were obtained under force and threat in the Police Station and not given to discharge the debt but as a security for clearing the debt of one Fathima. While so, the Courts below ought to have held that the accused had discharged the burden of proof by let in rebutted evidence.

7. The notice served to the respondent/complainant since returned as unserved, substitute of service was ordered and the same was effected. When the matter taken up for hearing today, no one appeared for the respondents/complainants.

8. From the documents placed before this Court, this Courts finds that the earliest record in these cases is Ex.D.4, which is the letter of acknowledgment of liability given by the accused in favour of one Fathima and Kannan. This letter dated 20.01.2014 marked as Ex.D.4, on perusal reveals the accused had borrowed a sum of Rs.2,00,000/- from one Kannan through Fathima to construct his house and to discharge the debt, he has given two cheques bearing No. 000009 and 000010 drawn in

Karur Vysya Bank. Letters given by the said Fathima viz., acknowledgment of liability in a Rs.20/- Indian Non Judicial Stamp paper bearing Nos.18157 & 18155 in favour of Saraswathi & Geetha respectively, were marked as Ex.P.7 in both cases.

9. The subject matter of S.T.C.No.347 of 2015 on the file of the learned Judicial Magistrate, Fast Track Court No.II, Poonamallee, Thiruvallur District, is the cheque for Rs.2,00,000/- dated 08.07.2015, bearing No.000009 drawn at Karur Vysya Bank in favour of Geetha, and the subject matter of S.T.C.No.349 of 2015 is the cheque for Rs.1,91,000/- dated 08.07.2015, bearing No.000010 drawn at Karur Vysya Bank in favour of Saraswathi. While Ex.D.4 indicates that these two cheques, which are the subject matter of the complaints, were handed over to Fathima and her husband Kannan on 20.01.2014 by the accused to discharge the debt payable to Fathima and Kannan, obviously been presented by Geetha and Saraswathi on 08.07.2015.

10. Reading the letter given by the accused to the Inspector of Police, Thiruverkadu Police Station, which is marked as Ex.P.6 in both cases, it appears that the accused had given an undertaking that he will

pay the debt of Fathima, which had been acknowledged by Fathima through her letter dated 23.07.2014, the documents are marked as Ex.P.7 in both cases. Perusal of these documents, it is obvious that the subject cheques bearing Nos.000009 and 000010 drawn by the accused from the account maintained by him in Karur Vysya Bank had been handed over to Fathima and Kannan on 20.01.2014, as per Ex.D.4. Fathima owes money to Geetha and Saraswathi and it is proved by Ex.P.7, the acknowledgment of liability letter on her 20 rupees stamp paper signed by Fathima.

11. In both cases, one Kannan was examined as D.W.2 and he had deposed that he and his wife Fathima were running unauthorized chit since 2012. In the said transactions, his wife owes money to Saraswathi and Geetha, viz., the complainants in these two cases. In this connection, a complaint was given against him and his wife Fathima before the Inspector of Police, Thiruverkadu Police Station, and during enquiry, he and his wife were subjected third decree treatment by the Police. At that time, two blank cheques given by the accused Munusamy was taken by the Inspector of Police and handed over to Saraswathi and Geetha.

Thereafter the said Munusamy was called to the Police Station and certain documents were obtained from him.

12. The exhibits referred above and the testimony of the defence witness clearly probabalize the defence raised by the accused that there was no legally enforceable debt and the cheques were obtained by force from Fathima and Kannan to whom, he entrusted the blank cheques on 20.01.2014 as a collateral security for the loan of Rs.2,00,000/- availed from Fathima and Kannan.

13. This Court finds that the trial Court has not gone into the oral evidence and the documentary evidence relied by the accused. The accused has discharged the burden of proof by establishing that the cheques were not given to discharge any debt and specifically given to Fathima and Kannan on 20.01.2014 been forcibly taken from Fathima by the complainants in connivance with police and filed the amount to their wish which they are not entitled.

14. In view of the Court, there is perverse, illegality and error in

the order of the Courts below, is inclined to interfere in it by exercising its revisional jurisdiction. Conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court, Magistrate Level II, Poonamallee, in S.T.C.Nos.349 & 347 of 2015 dated 01.11.2017, as confirmed by the learned Principal Sessions Judge, Tiruvallur, in C.A.Nos.186 & 187 of 2017, dated 03.10.2019, is set aside.

15. In the result, both the Criminal Revisions are allowed. The petitioner/accused acquitted of all charges in both cases. Fine amount, if any, paid shall be refunded to the petitioner forthwith. Bail bonds, if any, executed shall stand cancelled.

15.06.2023

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

Dr.G.JAYACHANDRAN, J

rts

To

1. The Principal Sessions Judge,
   Tiruvallur.

2. The Judicial Magistrate,
   Fast Track Court,
   Magistrate Level II,
   Poonamallee.

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