IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated**: 21.04.2023**

CORAM

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

Crl.R.C.No.236 of 2020

A.N.R.Jayamani ... Petitioner

Vs.

R.Dhanakumar ... Respondent

<u>Prayer:</u> Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to call for the records relating to order dated 10.09.2019 made in C.A.No.45 of 2017 on the file of the learned Principal Sessions Judge, Namakkal confirming the Judgement dated 07.04.2017 made in STC No.179 of 2016 on the file of the leanred Judicial Magistrate, Fast Track Court, Tiruchengode and set aside the same by allowing this Criminal Revision Petition.

For Petitioner : Mr.N.Manohran

For Respondent : Mr.S.Arun Prasath

<u>O R D E R</u>

The Revision is preferred by the aggrieved complainant who has lost before the trial Court as well as the appellate Court his private complaint against the respondent/accused alleging dishonouring of cheque given for discharging the existing liability.

2. The respondent/accused borrowed a sum of Rs.2,40,000/- on 22.08.2015 from the complainant to meet out his business and family expenses. To discharge the said liability, he gave the subject cheque bearing No.551148 on 22.09.2015 drawn at Canara Bank, EC Lee Bazaar, Salem. When the Cheque was presented for collection, it returned with an endorsement "kindly contact Drawer/Drawee Bank". On receipt of this Memo, the petitioner/complainant caused the statutory notice through his advocate on 09.11.2015. Notice received by the accused/respondent on 11.11.2015. Thereafter reply was caused by the respondent denying the liability. With these facts, the case was tried by the trial Court.

3. The complainant A.N.R.Jayamani mounted the witness box and marked seven Exhibits. On behalf of the accused, the accused and two other witnesses were examined as D.W.1 to D.W.3 and five Exhibits were marked as defence documents.

4. The substance of the evidence adduced by the complainant is that for the borrowing a month ago, a subject cheque marked as Ex.P1 was issued by the accused, to discharge the debt. It was presented for collection on 01.10.2015 but returned with an endorsement “kindly contact Drawer/Drawee Bank”. The Memo marked as Ex.P2, statutory notice marked as Ex.P4 and the reply notice marked as Ex.P6.

5. In the reply, the accused has alleged that the subject cheque was given to one R.Ramasamy of Alagapuram, Salem in the year 2008 and there was a dispute between him and the said Ramasamy which lead to the filing of complaint to the CM Special Cell on 26.08.2008. Pursuant to that the matter was settlement by paying a sum of Rs.70,000/- to the said Ramsamy vide cheque drawn at ABN AMRO Bank on 24.07.2008. A copy of which is marked as Ex.D5. Alleging that the complainant A.N.R.Jayamani is the son of the said Ramasamy, the accused contended that the cheque which was given during the transaction with Ramasamy, Alagapuram been misused by his son, the complainant.

6. To disprove the fact that the said R.Ramasamy is not the father the complainant, the complainant has marked Ex.P7, the death certificate of his

father N.Ramasamy who died on 30.01.1996. In the course of examination of D.W.1 the accused has retracted his earlier statement by saying that by mistake he has referred R.Ramasamy with whom he had money transaction is the father of the complainant. However, in any case the subject cheque was only given to R.Ramasamy in the year 2003 and in his complaint to the CM Cell, which is marked as Ex.D2 he has referred the number of this cheque and said it was given to R.Ramasamy as security for the loan availed and therefore the cheque has gone to the hands of the complainant and been misused in the year 2015, after introduction of MICR CDS Cheques pursuant to the RBI guidelines in the year 2013, the cheques without code are invalid and not acceptable.

7. The trial Court on considering the materials placed by the defence which according to it, probablise the defence, dismissed the complaint. Aggrieved by that, the complainant has preferred appeal before the learned Principal Sessions Judge, Namakkal in C.A.No.45 of 2017. The first appellate Court on reappreciation of evidence, confirmed the Judgment of the trial Court. As a sequence, the present revision petition is filed.

8. The learned counsel appearing for the revision petitioner/complainant would submit that the accused admits the execution of the cheque. He also admits that the cheque was given to one Ramasamy of Alagapuram as security. However, the complainant has proved beyond any pale of doubt that the said Ramasamy is not the father of the complainant. The complainant has proved in appeal that the complainant's father is N.Ramasamy and he died on 30.01.1996 and proved the said fact marked Ex.P7. While so, from the inception of issuing the cheque without sufficient funds followed by a false reply the accused had exposed his intention to cheat the complainant by issuing cheque to discharge his liability and latter denying the very execution of the cheque. Having admitted the signature found in the cheque the presumption against the accused to be drawn. The probable defence placed by the accused by examining the Bank Manager of Canara Bank and the Inspector of E.O.W Police Station, Salem and Exs.D1 to D5 does not probablise his defence. The Courts below have failed to visualize that the cheque given to R.Ramasamy in the year 2003 might have taken back by the accused while he settled the dispute with the said Ramasamy before the Police and the same cheque given to discharge his liability with the complainant.

9. Heard the counsel on either side and perused the records.

10. From Ex.D2, it is proved that the cheque marked as EX.P1 which is the subject matter of the complaint was earlier issued to R.Ramasamy. The grievance of the accused in his complaint, marked as Ex.D2 sent to the CM Cell is that the cheque taken by Ramasamy as a security not returned in spite of discharging the loan with an intention to misuse the same. Latter the matter has been settled between the accused and R.Ramasamy. The fate of the cheque which is Ex.P2 not whispered anywhere in this document. Now, it has surfaced after seven years by way of presenting the cheque for collection by the complainant. By that time, the format of the cheque issued by the banks have changed. From the evidence of D.W.2, I find that as per the RBI guidelines, from 2013 onwards the cheques without MICR Code and CDS number not being honoured. Hence Ex.P2 returned to the depositors with an endorsement "Kindly contact Drawer / Drawee Bank". DW2 in the cross examination had deposed that the account maintained by the accused in Canara Bank became in operative since 2006. The last transaction was done on 24.01.2006 and he had closed the account on 01.07.2016.

11. The learned counsel appearing for the petitioner/complainant would submit that the accused has closed the account only after receipt of the statutory notice which also expose his intention to cheat the complainant.

12. However, this Court finds that the complainant except proving that cheque signed by the accused, had failed to establish the fact that it was given to him on 22.08.2015 for repayment of existing loan availed by the accused. The accused having proved that the cheque was given to one R.Ramasamy in the year 2003 and with regard to that he has given a complaint to CM Cell in the year 2008 had probabilise his defence that the cheque was not issued to the complainant. The mistaken identity regarding Ramasamy, the accused in his cross examination has admitted that he was in the impression that the complainant is the son of R.Ramasamy and later came to know that he is not the son of Ramasamy but the son of N.Ramasamy who died in the year 1996 itself.

13. The learned counsel appearing for the revision petitioner contended that the false case regarding the identity of Ramasamy renders testimoney of D.W.1 unbelievable and the same cannot be countenanced. Except the mistaken identity of relationship, the accused has proved that the cheque was initially not given to the complainant and he never gave the cheque to the complainant at any point of time. But the said cheque was only given to R.Ramasamy in the year 2003. Having proved this fact, the burden to prove how that cheque came to the hands of the complainant, lies to the shoulder of

the complainant. There is no positive evidence in this regard except the pleading that the cheque was signed by the accused on 22.09.2015 when he borrowed money and was given to the complainant. The improbability of the complainant's case has forced the Courts below to dismiss the complaint and this Court has no other alternate view. Hence, this Criminal Revision case stands dismissed.

21.04.2023

Index: Yes/No
Speaking order/Non speaking order
vum

To

1.The Principal Sessions Judge,
Namakkal.

2. The Judicial Magistrate,
Fast Track Court, Tiruchengode.

3.The Section Officer,
Criminal Section,
High Court, Madras.

Dr.G.JAYACHANDRAN,J.

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