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CrI.R.C.No.468 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.06.2023

CORAM :

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

CrI.R.C.No.468 of 2020

Rajasekar

.. Petitioner

Vs.

Mugundaramanujam

..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the conviction imposed in the judgment dated 19.08.2019 made in C.A.No.124 of 2018 on the file of the II Additional District & Sessions Judge, Thiruvallur at Poonamallee confirming the conviction imposed in judgment dated 04.07.2018 made in C.C.No.28 of 2018 on the file of the Judicial Magistrate, Fast Track Court (Magistrial Level), Ambattur sentencing the accused to undergo 7 months Simple Imprisonment and directed to pay compensation of Rs.14,00,000/- compensation under Section 357(3) Cr.P.C, within two months from the date of the judgment and default of the said payment the accused shall undergo further period one month



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Simple Imprisonment for offence under Section 138 of N.I.Act by allowing this Criminal Revision Case.

For Petitioner : M/s.R.Thirumoorthy

For Respondent : Mr.K.Sankaran

ORDER

This Criminal Revision Case is filed by the accused who had suffered judgment of conviction in the private complaint initiated under Section 138 of Negotiable Instruments Act.

2. The brief facts in the private complaint filed by Mugundaramanujam is that on the representation made by Rajasekar and his associate T.A.Selvam that they are the agreement holder of the property situated at Ambattur Oragadam Co-operative Building Society's Colony, comprised in Survey Nos.476/2 and 4483/1 of Thirumullaivoyal village, he advanced Rs.40,00,000/- to them. Later he found that, the documents produced by them were forged documents and by deceit, they have received Rs.40,00,000/-. On his repeated demand to refund the money. Rajasekar (the revision petitioner herein) had returned



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Rs.13,00,000/- via fund transfer by RTGS and subsequently issued four post dated cheques bearing Nos.542921, 542923, 542924 and 542925 drawn on Indian Bank, Thirumullaivoyal branch for Rs.4,00,000/-, Rs.3,50,000/-, Rs.3,50,000/- and Rs.3,00,000/- respectively. His associate T.A.Selvam returned Rs.1,00,000/- by cheque bearing No.474140 and for the balance he gave two post dated cheques dated 21.11.2017 and 24.11.2017 bearing Nos.474149 & 471148 drawn on Corporation Bank, Ambattur branch for Rs.6,50,000/- and Rs.5,00,000/- respectively.

3. According to the complainant, the four cheques given by the revision petitioner and two cheques given by his associate T.A.Selvam, on presentation bounced. Hence, he has initiated the private complaints against the revision petitioner as well as T.A.Selvam. The case against T.A.Selvam ended in conviction. Appeal preferred by T.A.Selvam was dismissed confirming the trial Court judgment. Thereafter, the said T.A.Selvam preferred Crl.R.C.No.469 of 2020. Pending disposal of the said revision petition, T.A.Selvam settled the dispute with the complainant by paying the cheque amount. Recording the same, this



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Court has disposed the revision petition in Crl.R.C.No.469 of 2020 on 08.06.2023.

4. As far as the four cheques, which are the subject matter of the present revision petition, the trial Court had disbelieved the plea of the accused that he owe no debt payable to the complainant. The four cheques were obtained from him with the help of police when he was called to the police station for enquiry.

5. The appeal preferred by the accused before the Sessions Court came to be dismissed for non prosecution, since the appellant did not appear on the date of calling and there was no representation on his behalf. The lower appellate Court had recorded that despite repeated directions, the appellant had failed to appear and therefore, the appeal is liable to be dismissed for default and non prosecution of case.

6. The learned counsel appearing for the revision petitioner/accused raised two grounds, apart from alleging the deprivation of the right of appeal by the lower appellate Court.



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7. Before advertng to the plea that the dismissal of the appeal for non prosecution is deprivation of right of appeal. This Court wish to take for consideration the other defence raised by the accused.

8. According to the learned counsel for the revision petitioner, the complaint is bereft of details about the receipt of Rs.40,00,000/- jointly by the revision petitioner, (Rajasekar) and his associate, T.A.Selvam. The complaint does not disclose in whose favour the cheque bearing 021021 dated 27.01.2016 was drawn and realised as part sale consideration of Rs.20,00,000/-. The complainant had not produced documents regarding the payment of Rs.40,00,000/- to the accused and T.A.Selvam. A vague and bald allegations in the complaint that, in all totally, the accused along with T.A.Selvam jointly received Rs.40,00,000/- from the complainant towards part consideration of sale agreement dated 28.12.2015 has been erroneously accepted by the trial Court without sufficient proof and supporting documents.



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9. Further, the learned counsel for the revision petitioner submitted that the four cheques, which is the subject matter of the complaint marked as Ex.P2 series, were obtained by force in the presence of the police. PW.1, the complainant Mugundaramanujam in the cross examination has admitted that he gave a police complaint and the accused was called for enquiry. Therefore, the accused has probalised the fact that these cheques were obtained under threat and no due existed for the complainant to legally enforce against the accused.

10. According to the learned counsel for the revision petitioner, while the trial Court had failed to properly appreciate the defence, which has been proved by preponderance of probability, the lower appellate Court had not deprived opportunity to the appellant to prove his innocence.

11. Heard the learned counsel for the revision petitioner and perused the records.



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12. The specific case of the complainant is that the revision petitioner, by name Rajasekar along with one T.A.Selvam entered into agreement with him on 28.12.2015 and received jointly Rs.40,00,000/-. Having found that the title deed of the property for which these two persons claimed as Power of Attorney holders is not genuine, he requested the revision petitioner and his associate T.A.Selvam to return the money, they received as advance. After repaying a sum of Rs.14,00,000/-, for the balance of Rs.26,00,000/- four cheques were given by this revision petitioner totally for the sum of Rs.14,00,000/- and his associate T.A.Selvam has given two cheques for a sum of Rs.11,50,000/-. In the complaint, it is specifically stated that this revision petitioner has transferred Rs.13,00,000/- by RTGS into the account of the complainant and the associate T.A.Selvam has paid Rs.1,00,000/- by cheque. It is noted that T.A.Selvam, the associate of this revision petitioner had admitted the issuance of cheques for Rs.11,50,000/- and had paid the money pending disposal of the revision petition. Insofar as the revision petitioner, Rajasekar is concerned he claims that the cheques



were obtained from him under threat in the police station for which, the learned counsel for the revision petitioner relies upon the suggestion put to PW.1 in the cross examination.

13. The perusal of the testimony of PW.1 indicates that the said suggestion been denied by PW.1. Except this suggestion, there is no other evidence to fortify the defence taken by the accused. In fact for the statutory notice dated 11.12.2017, which has been received by the accused, he had remained silent and had not replied for it. Insofar as the defence taken by the accused, it is only the suggestion put to the accused and nothing more. When the said suggestion been denied by the complainant, it does not take the accused case anywhere near preponderance of probability.

14. The learned counsel for the revision petitioner states that the complaint is bereft of details, which cannot be countenanced in the light of the fact that the accused had repaid Rs.13,00,000/- through RTGS to the complainant admits he had issued four cheques, which are marked as



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Ex.P2 series, for a total sum of Rs.13,00,000/-. He has not discharged the burden of presumption regarding the four cheques. His defence that it was obtained under threat, is not corroborated.

15. For the question regarding the sale agreement of a property, which had no clear title and receipt of advance Rs.40,00,000/- based on Power of Attorney, there is no explanation or denial except the complaint is bereft of detail how much and when paid and whom it was paid. When the accused had candidly admitted the execution of Ex.P1 and the recital found in it. The marked document which form part of evidence provides the details. Further pursuant to the cancellation of the agreement, the revision petitioner has repaid Rs.13,00,000/- and his associate repaid Rs.1,00,000/-. For the balance, the four cheques totally for Rs.14,00,000/- given by the revision petitioner and his associate has given two cheques for Rs.11,50,000/-.

16. Therefore, the conduct of the revision petitioner repaying Rs.13,00,000/- through bank and issuance of four cheques for total sum



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of Rs.14,00,000/- coupled with recital found in Ex.P1 clearly establishes the fact that pursuant to the sale agreement marked as Ex.P1, a sum of Rs.40,00,000/- has been received by this revision petitioner and his associate T.A.Selvam. Later on, they have agreed to repay the money received. On the part of the T.A.Selvam, he has paid Rs.1,00,000/- through the bank and issued two cheques for Rs.6,50,000/- and Rs.5,00,000/- totally Rs.11.50,000/- and though he had not honoured the cheques, but repaid it during the pendency of his revision petition and got the offence compounded.

17. As far as this revision petitioner is concerned, his consistent stand is that, there is no enforceable due payable to the complainant and the cheques were obtained from him under threat with the help of police. This defence the accused ought to have taken soon after the receipt of statutory notice and ought to have substantiate through direct or circumstantial evidence in the course of trial. Without an iota of evidence believe that the cheques were extorted from him under threat is farfetch.



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18. Adverting to the plea that the revision petitioner was deprived of right of appeal, this Court on perusal the record finds otherwise. The trial Court had passed the judgment on 04.07.2018, convicting the revision petitioner/accused Rajasekar for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo 7 months Simple Imprisonment and directed to pay the cheque amount of Rs.40,00,000/- as compensation, in default he was sentenced to undergo one month Simple Imprisonment. On the same day, the sentence was suspended, since he has expressed his intent to prefer appeal. Thereafter, he had preferred appeal before the II Additional District and Sessions Judge, Thiruvallur at Poonamallee and same was taken on file as C.A.No.124 of 2018.

19. After filing the appeal, the appellant had not appeared before the lower appellate Court either in person or through his counsel in spite of repeated direction. The learned Sessions Judge in his order had specifically recorded that despite repeated directions, the appellant had



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not appeared and therefore, he dismiss the appeal for default and non prosecution.

20. Against this order, revision petition filed and at the time of admission, this Court suspended the sentence on condition that the revision petitioner should deposit a sum of Rs.3,00,000/- in the account of C.C.No.28 of 2018 at the time of producing the surety and shall deposit remaining Rs.1,50,000/- within a period of two months. The revision petitioner had deposited Rs.3,00,000/- at the time of producing surety, but he had not paid the remaining Rs.1,50,000/- within a period of two months and till date the money is not paid.

21. The above conduct of the revision petitioner goes to show that having got order of suspending the sentence and after preferring the appeal he had not attended the Court despite repeated adjournments and directions. No doubt, the accused has a right of appeal, but Court cannot wait for him in finitely for his appearance in person or through counsel to put forth his case. The State fund need not to misutilise by engaging legal



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aid counsel for the appellant/accused in a private complaint arising under Section 138 of Negotiable Instruments Act. Having suffered conviction by the judgment of the trial Court and given the privilege of suspension of sentence, the accused cannot go incognito expect Court should not dispose his appeal in his absence.

22. The dismissal of the revision petition for non prosecution without considering the merit is an error but not an irregularity, when the appellant before the lower appellate Court failed to turn up despite direction.

23. The learned counsel for the revision petitioner/accused has placed all his submissions which has been extracted above. The opportunity which not been availed by the accused before the lower appellate Court has now been granted and availed by the accused before this Court. Hence no prejudice is caused to him by dismissal of the appeal for non prosecution by the lower appellate Court.



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24. In this case, the accused had been provided with opportunity to prefer an appeal, recording his intent to prefer appeal and the trial Court has suspended the sentence. The accused had infact preferred appeal and had the privilege of enjoying the suspension of sentence till the matter got disposed. Nothing prevented him to appear before the Court in person or through counsel and place his submissions. Having deprived himself the opportunity, he can not blame the Court that it has not given opportunity to put forth his case.

25. With the above observations, this Criminal Revision Case is dismissed as devoid of merits.

22.06.2023

Internet : Yes/No

Index: Yes/No

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To

1.The II Additional District & Sessions Judge,
Thiruvallur at Poonamallee.

2. The Judicial Magistrate, Fast Track Court(Magistrial Level),
Ambattur.



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Dr.G.JAYACHANDRAN, J.

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