



Crl.R.C.No.242 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.242 of 2021

Pandurangam (died)
Mani

... Petitioner

Vs.

Karthikeyan
Respondent

...

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to call for the entire records in in connection with Crl..A.No.09 of 2013 on the file of the Principal District Judge, Thiruvannamalai, Thiruvannamalai District and set aside the acquittal order dated 06.01.2021.

For Petitioner : Mr.S.Silambuselvan

For Respondent : Mr.M.Palanivel



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ORDER

This Criminal Revision Petition has been filed to set aside the order dated 06.01.2021 passed in Crl.A.No.09/2013 by the learned Principal District and Sessions Judge, Thiruvannamalai, Thiruvannamalai District, setting aside the judgment dated 11.12.2012 passed in C.C.No.143/2004 by the learned Judicial Magistrate, Polur Thiruvannamalai District.

2. The petitioner's father namely Pandurangan (deceased) was the complainant in C.C.No.143/2004 on the file of Judicial Magistrate Court, Porur, Thiruvannamalai District and he filed the above complaint against the respondent herein/accused for the offence punishable under Section 138 of Negotiable Instruments Act seeking direction to pay a sum of Rs.10,76,500/- towards the dishonoured cheque.

3. Before Trial Court, the complainant and one another witness were examined as PW1 and PW2 and three documents were marked as Ex.P1 to Ex.P3 and the respondent examined himself as DW1 and marked three



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documents as Ex.B1 to Ex.B3. The Trial Court, after perusing the oral and documentary evidence, convicted the respondent/ accused under Section 138 of Negotiable Instruments Act and sentenced him to undergo 2 years simple imprisonment and to pay fine of Rs.12,00,000/- (including compensation of Rs.11,90,000/-) to the complainant. Since the complainant died pending case, the Trial Court ordered the respondent/accused to pay the compensation of Rs.11,90,000/- to the legal heir of the complainant.

4. Challenging the judgment of conviction, the respondent/accused preferred an Appeal in Crl.A.No.9/2013 before the learned Principal District and Sessions Judge, Tiruvannamalai District. The lower appellate Court, vide judgment dated 06.01.2021, acquitted the respondent/accused from the offence under Section 138 of Negotiable Instrument Act, by setting aside the judgment passed by the Trial Court. Challenging the above order of acquittal, the legal heir of the deceased Pandurangan/complainant, has preferred the present Criminal Revision Case before this Court.



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5. The learned counsel for the petitioner submitted that the lower Appellate Court has acquitted the respondent/accused for the reason that the complainant has not filed any proof i.e. postal receipt or postal returned cover for sending statutory notice demanding the cheque amount to the respondent/accused as exhibits before the Trial Court. He further submitted that the above acquittal order passed by the Trial Court is contrary to the decisions made by the Hon'ble Supreme Court and to support his contentions, he relied upon the following decisions of the Hon'ble Supreme Court.

- 1. In the decision in Bir Singh Vs. Mukesh Kumar reported in 2019(4) Supreme Court Cases 197*
- 2. Ajeet Seeds Limited Vs. K.Gopalakrishnaiah reported in (2014) 12 Supreme Court Cases 685*
- 3. C.C.Alavi Haji Vs. Plapetty Muhammed and another reported in (2007) 6 Supreme Court Cases 555*

He also brought to the notice of this court to the observation made by the Hon'ble Supreme Court in *Ajeet Seeds Limited Case*, (as stated supra), which runs as follows



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" Debt, Financial and Monetary Laws - Negotiable Instruments Act 1881 - S.138 - Absence of averment in complaint about service of notice upon accused - Also, no proof that either said notice was served or it was returned unserved/unclaimed - Not proper for High Court to quash the complaint on the ground of absence of said averment in complaint and proof - Complaint in question restored - General Clauses Act, 1897 - S.27 - Evidence Act, 1872 - S.114 III (f) - Criminal Procedure Code . 1973. Ss.82 and 204.

Therefore, he submitted that, as per the ratio laid down by the Hon'ble Supreme Court of India in the above said decisions, the judgment of acquittal passed by the lower Appellate Court is liable to be set aside and hence, he pleaded to allow the Criminal Revision Case.

6. The learned counsel for the respondent submitted his arguments supporting the judgment of the lower Appellate Court. He further contended that for prosecuting a person under Section 138 of Negotiable Instruments Act, issuing legal notice demanding the cheque amount is mandatory one



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and then only cause of action will arise to the complainant for filing complaint against the drawer of the cheque. In this case, the respondent failed to evidence the issuing of legal notice and hence, the Lower Appellate Court has rightly dismissed the complaint and acquitted the accused and as such, there is no ground to interfere with the judgment passed by the Lower Appellate Court and pleaded to dismiss Criminal Revision Case.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondent and I have perused the materials on record.

8. A perusal of the records reveal that the father of the petitioner filed a complaint in C.C.No.143 of 2004 before the Trial Court under Section 138 of Negotiable Instruments Act seeking compensation towards the dishonoured cheque amount and it was allowed by the Trial Court, convicting and sentencing the respondent/accused, as stated supra. Challenging the judgment of conviction, the respondent/ accused preferred an Appeal in Crl.A.No.9/2013 before the lower Appellate Court and it was



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decided in favour of the respondent/accused and the lower Appellate Court acquitted the respondent/accused.

9. The lower appellate Court allowed the Appeal mainly on the ground that the complainant, who is father of the petitioner herein, had not filed any proof to show that he sent a statutory legal notice to the respondent/accused, before filing the complaint. It is observed by the learned lower Appellate Judge that only after sending legal notice to the complainant, cause of action for filing complaint under Section 138 of Negotiable Instruments Act will arise and hence, the acquitted the respondent/accused from the offence under Section 138 of Negotiable Instruments Act.

10. Now, the question to be decided is that, whether for want of notice under Section 138 of Negotiable Instruments Act, evidence is made out or not. At this juncture, it is relevant to extract Section 138 of Negotiable Instruments Act, which runs as follows.



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138. Dishonour of cheque for insufficiency, etc., of funds in the account.

138. Dishonour of cheque for insufficiency, etc., of funds in the account. Where any 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. either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice. to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a)the cheque has been, presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b)the payee or the holder in due course. of the cheque as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque,



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within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c)the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.-For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

Therefore, as per the proviso to Section 138(3) of Negotiable Instruments Act, the payee has to make a demand for payment of cheque amount by way giving notice in writing to the drawer of the cheque, within 30 days of the receipt of the information by him from the bank regarding dishonor of cheque. On failure of the drawer to make payment of the dishonoured cheque amount within 15 days of the receipt of the notice, then only cause of action for prosecuting the drawer under section 138 of Negotiable Instruments Act will arise.



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11. In this case, the complainant had failed to evident the fact of issuing notice, as mandated under Section 138(b) of Negotiable Instruments Act. Therefore, the lower appellate Court has rightly dismissed the appeal and acquitted the respondent/accused. Hence, this Court is of the view that the judgment of acquittal passed by the lower appellate Court does not warrant any interference by this Court and hence, the Criminal Revision Case is liable to be dismissed, as it has no merits.

12. Accordingly, the Criminal Revision Case is dismissed.

16.02.2023

Index: Yes/No
Internet: Yes/No
mst

To

1. The Principal District and Sessions Judge, Thiruvannamalai.
2. The Judicial Magistrate, Polur. Thiruvannamalai District.
3. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

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