



Crl.R.C.No.1087 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R. HEMALATHA**

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D.Ramdass

... Petitioner

Vs.

V.Rajendran

... Respondent

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the Judgment and orders dated 20.10.2021 passed in Crl.A.No.343 of 2019 by the III Additional District and Sessions Judge, Coimbatore.

For Petitioner : Mr.Krishnasamy Chinnasamy
For Respondent : Mr.T.Arul

ORDER

Challenging the orders dated 20.10.2021 passed in Crl.A.No.343 of 2019 by the III Additional District and Sessions Judge, Coimbatore, the present criminal revision is filed.



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2. The revision petitioner is the accused in C.C.No.444 of 2017 on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level I, Coimbatore. The respondent/complainant filed a private complaint under Section 200 of Cr.P.C., against the revision petitioner / accused for an offence punishable under Section 138 of the Negotiable Instruments Act.

3. The case of the complainant in a nutshell is as follows:

The revision petitioner/accused borrowed a sum of Rs.25 lakhs from the complainant and in order to discharge his liability, the accused issued the following cheques:

<i>S. No.</i>	<i>Date</i>	<i>Cheque No.</i>	<i>Drawn on</i>	<i>Amount</i>
1	08.03.2016	140902	Axis Bank Ltd., Chennai	Rs.10,00,000/-
2	10.03.2016	140903	Axis Bank Ltd., Chennai	Rs.10,00,000/-
3	14.03.2016	140904	Axis Bank Ltd., Chennai	Rs.5,00,000/-



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4. When the complainant presented the cheques for collection through his banker viz., City Union Bank Ltd., Pannimadai Branch, Coimbatore, the same was returned for the reason 'Funds insufficient'. Therefore, the complainant issued a legal notice dated 02.04.2016 to the accused demanding the latter to pay the amount due under the Cheque and the same was received by the accused on 06.04.2016. According to the complainant, though the accused received the said notice, he did not make good the payment and also did not send any reply. Thereafter he filed a private complaint under Section 200 Cr.P.C., in C.C.No.444 of 2017.

5. On receipt of the complaint, the learned Judicial Magistrate took cognizance of the offence after observing necessary legal formalities and issued summons for the appearance of the accused under Section 204 (3) of Cr.P.C. Copies of records were furnished to the accused, on his appearance, under Section 207 of Cr.P.C. When the accused was questioned with regard to the substance of accusation made against him



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in the complaint, he pleaded not guilty and therefore the case was posted for trial.

6. The respondent / complainant examined himself as P.W.1 and another witness one S.Dhilip Kumar as P.W.2 and marked Ex.P1 to Ex.P12 on his side. The complainant had deposed about the borrowal of a sum of Rs.25 lakhs and the issuance of three cheques towards discharge of his liability by the accused. He has also deposed about the issuance of the statutory notice to the accused, demanding him to repay the amount due under the cheque. P.W.2, the Manager of City Union Bank, Pannimadai Branch, Coimbatore deposed that the cheques presented by the complainant were returned for the reason 'funds insufficient' and thus P.W.2 corroborated the versions of P.W.1. When the accused was questioned under Section 313 (i) (b) Cr.P.C. with regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. However, he did not adduce any oral or documentary evidence on his side.



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7. The learned Judicial Magistrate I, Coimbatore after analysing the evidence on record found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act, convicted and sentenced him to undergo Simple Imprisonment for a period of six months and to pay a sum of Rs.25 lakhs as compensation to the complainant, in default to undergo imprisonment for a period of two months. The order of Conviction and Sentence was passed on 24.09.2019. Aggrieved over the said Judgment, a Criminal Appeal was filed in C.A.No.343 of 2019 before the III Additional District and Sessions Judge, Coimbatore. The III Additional District and Sessions Judge, Coimbatore vide her orders dated 20.10.2021 dismissed the appeal, confirming the conviction and sentence passed by the learned Judicial Magistrate I, Coimbatore. Aggrieved over the same, the present revision is filed.

8. Mr.Krishnasamy Chinnasamy, learned counsel for the petitioner contended that the accused did not obtain any loan from the complainant and that the complainant is a total stranger to him.



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Moreover, the complainant has not explained as to how he lent huge sum of Rs.25 lakhs to the accused when he is a rank outsider.

9. Per contra, Mr.T.Arul, learned counsel for the respondent /complainant contended that the accused did not adduce any reply to the statutory notice issued by the complainant and did not also cross examine P.W.1 on this aspect of acquaintance though several opportunities were given to him. Hence, the accused cannot take a stand that the complainant is a total stranger and that he did not borrow any amount from the complainant, especially when he had not specifically denied his signature on the cheque.

10. A perusal of the complaint and the deposition of P.W.1 clearly shows that the accused obtained a loan of Rs.25 lakhs from the complainant and for discharging his liability, he issued three cheques bearing Nos.140902, 140903, 140904 drawn on Axis Bank Ltd., Chennai. The accused did not specifically deny his signature on the cheques either at the time of questioning him with regard to the substance



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of the accusation made against him or when he was questioned under Section 313 (i) (b) Cr.P.C. with regard to the incriminating circumstances appearing in evidence against him. He did not also cross examine P.W.1. The learned II Additional District and Sessions Judge, Coimbatore has observed in her order thus:

“19. The accused by now contends that he was not given a chance to cross examine Pw1 and Pw2 and his applications under section 311 were dismissed and only because of this he was not able to establish his defence. While considering this contention this court has perused the lower court records. It shows that the complainant was examined as Pw1 on 09.11.2017 and the case was posted for cross examination of Pw1 on 20.12.2017 at the request of the accused and from 20.12.2017 it was adjourned to 10.01.2018 again at his request and from 10.01.2018 to 16.03.2018 and to 12.04.2018 and finally on 12.04.2018 the evidence of Pw1 was closed as the accused failed to avail the opportunities to cross examine him. And further on 14.06.2018 Pw2 was examined and his evidence was closed, on the same day. A petition to recall the complainant side witness CMP. No. 1621/2018 was filed and it was allowed on 12.07.2018 with direction to cross



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Pw1 on 14.08.2018. But on 14.08.2018 the accused was not ready to cross Pw1. So the case was posted for examination of defence witness by dismissing the recall petition. A further perusal of lower court notes paper shows that the accused again filed a 311 petition to recall Pw1 and it was returned by stating that earlier petition was dismissed. The records further show that the accused once again filed a petition to reopen and recall Pw1 and the same were also dismissed on 25.02.2019.”

11. It is clear that the accused did not avail the opportunity to cross examine P.W.1. Therefore, P.W.1's evidence remains unrebutted. It is settled law that while this Court exercising jurisdiction under Section 397 Cr.P.C., cannot act as a second appellate Court. Both the Courts below had concurrently held that the accused is found guilty of the offence punishable under Section 138 of the Negotiable Instruments Act. I do not find any reason to interfere with the same. Accordingly, the Criminal Revision is dismissed.

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Speaking/Non-Speaking order
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1. The III Additional District and Sessions Judge, Coimbatore.
2. The Judicial Magistrate, Fast Track at Magisterial Level I, Coimbatore.



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R. HEMALATHA, J.

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