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Crl.R.C.No.512 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.No.512 of 2016

T.Vijaya Prabhu

... Petitioner

VS.

S.Srinivasan

... Respondent

Prayer: Criminal Revision filed under Sections 397 r/w 401 of the Code of Criminal Procedure praying against the order of conviction passed in C.A.No.43 of 2015 dated 03.02.2016 on the file of the learned Principal Sessions Judge, Tiruvallur confirming the conviction and sentence passed in S.T.C. No.470 of 2014 on the file of the learned Fast Tract Court (Magisterial Level), Ambattur, dated 17.04.2015 for an offence under Section 138 of the Negotiable Instruments Act.

For Petitioner

: Mr.M.Gnanasekar

For Respondent

: Mr.T.Muruganantham



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ORDER

This Civil Revision Petition has been filed against the judgment and order passed by the learned Principal Sessions Judge, Thiruvallur in Crl.A.No.43 of 2015, dated 03.02.2016, confirming the judgment and order of conviction and sentence passed by the learned Judicial Magistrate Fast Track Court (Magisterial Level), Ambattur in STC No.470 of 2014, dated 17.04.2015.

2.The respondent/complainant filed a private complaint on the ground that the petitioner/accused borrowed a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) on 29.06.2012 for construction of his house and he executed a promissory note which was marked as Ex.P1. When the respondent/complainant demanded for the repayment of the amount, the petitioner/accused issued a cheque dated 29.11.2012 for a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) in favour of the respondent which was marked as Ex.P2. The cheque was presented by the respondent and the same was returned with an endorsement “Insufficiency of Funds” on 10.12.2012. Hence, the Statutory Notice dated 26.12.2012 was issued by the respondent demanding for the payment of the cheque amount within fifteen days. This notice was marked as Ex.P4. This notice was received by the petitioner/accused and a reply notice was given dated 08.01.2013, which was



marked as Ex.P6. The petitioner denied the execution of the pronote and the issuance of cheque and according to the petitioner, he borrowed only a sum of Rs.1,00,000/- (Rupees One Lakh only) from the respondent and agreed to pay a sum of Rs.1000/- (Rupees One Thousand only) every day as Thandal for hundred days. As a security, a blank cheque was issued by the petitioner and the same was misused by the respondent.

3.The Trial Court on considering the facts and circumstances of the case and on appreciation of evidence, came to a conclusion that the petitioner has not rebutted the legal presumption under Section 139 of the Negotiable Instruments Act and accordingly, the petitioner was convicted for offence under Section 138 of the Negotiable Instruments Act and he was sentenced to undergo six months simple imprisonment and also to pay the cheque amount of Rs.15,00,000/- (Rupees Fifteen Lakhs only) as compensation under Section 357(3) of Cr.P.C.

4.Aggrieved by the above order passed by the trial Court, the petitioner filed an appeal before the Principal Sessions Judge, Thiruvallur in Crl.A.No.43 of 2015. The learned Appellate Judge had proceeded to hear the appeal in the absence of the petitioner or any counsel representing him and the Appellate Court heard the arguments of the learned counsel who appeared for the respondent and considered the materials placed before the Court and ultimately, by a judgment and order dated 03.02.2016, the order passed by the Trial Court was confirmed.



Aggrieved by the same, the present criminal revision petition was filed before this Court.

5. When this criminal revision petition was entertained by this Court, the sentence was suspended with a condition that the petitioner must deposit a sum of Rs.2,25,000/- (Rupees Two Lakhs Twenty Five Thousand only) before the Trial Court, within a period of two weeks. This condition was not complied with by the petitioner. Ultimately, when the matter came up for hearing on 15.02.2023, the learned counsel for the petitioner requested for some time to enable the petitioner to deposit the same as directed by this Court.

6. When the matter was taken up for hearing today, the learned counsel for the petitioner submitted that the petitioner filed a surrender petition before the Trial Court on 22.02.2023 and also offered to deposit the sum of Rs.2,25,000/- (Rupees Two Lakhs Twenty Five Thousand only) as directed by this Court. However, the trial Court refused to receive the amount and since the petitioner had not complied with the earlier order passed by this Court, the petitioner was remanded to the Central Prison, Puzhal to undergo the sentence. The learned counsel therefore, submitted that the petitioner is now inside the prison from 22.02.2023.



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7.The learned counsel for the petitioner further submitted that the petitioner has a very good case on merits, since the respondent has not established that he was carrying on with regular financial business and the stand that was taken by the respondent as if he has lent the petitioner a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only), is totally unbelievable and same can only be established before the Appellate Court where there is scope for appreciation of evidence. The learned counsel submitted that the petitioner will not be able to undertake this exercise before this Court, since the scope of interference in the revision is very limited.

8.In the considered view of this Court, the Appellate Court ought not to have decided the appeal without ensuring that the petitioner is represented through a counsel. Ultimately, the petitioner is facing an offence which will lead to imprisonment and therefore, atleast a legal aid counsel should have been appointed to represent the petitioner during appeal. The Appellate Court is the last Court for appreciation of evidence and if the petitioner loses an opportunity before the Appellate Court, the petitioner cannot raise contentions on facts before the revisional Court, since the jurisdiction of the revisional Court is only to see if the findings of the Courts below suffers from illegality or perversity.



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9. In the light of the above discussion, this Court finds that the petitioner must be given one last opportunity before the Appellate Court to establish his case. In view of the same, this Criminal Revision Petition is disposed of and the matter is remanded back to the file of the Principal Sessions Judge, Thiruvallur with the following directions:

- (a) The petitioner is directed to deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs only) and thereafter, move an application for suspension of sentence before the learned Principal Sessions Judge, Thiruvallur.
- (b) After the petitioner complies with the condition imposed in clause (a), the learned Principal Sessions Judge, Thiruvallur shall suspend the sentence imposed by the Trial Court and enlarge the petitioner on bail by imposing necessary conditions.
- (c) The learned Principal Sessions Judge, Thiruvallur shall fix a date for the hearing of the Criminal Appeal on merits and opportunity shall be given to the petitioner and the respondent to put forth their case and
- (d) The learned Principal Sessions Judge, Thiruvallur shall dispose of the criminal appeal, within a period of three months from the date of receipt of copy of this order.



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10.In the result, this Criminal Revision Petition is disposed of with the above directions.

28.02.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr

To

- 1.The Principal Sessions Judge, Tiruvallur.
- 2.The Fast Tract Court (Magisterial Level), Ambattur.
- 3.The Superintendent of Prison,
Puzhal.

Note: Issue Order Copy on 07.03.2023



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N. ANAND VENKATESH, J.

SSR

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