



Crl.R.C.No.871 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.06.2023

CORAM :

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

Crl.R.C.No.871 of 2020

and

Crl.M.P.Nos.6130 & 6131 of 2020

K.S.Punniamoorthy

.. Petitioner

Vs.

V.Gopal

..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to call for the records in Crl.A.No.26/2017, on the file of II Additional District and Sessions Court, Vellore at Ranipet dated 08.01.2020, confirming the conviction and sentence passed by the learned Judicial Magistrate, Sholighur in STC.No.153 of 2015 dated 15.03.2017 and set aside the same.

For Petitioner : Mr.S.Kaithamalai Kumaran

For Respondent : Mr.P.Suresh Babu
for Mr.C.Sathish



Crl.R.C.No.871 of 2020

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ORDER

The revision petitioner being aggrieved by the concurrent findings of the Courts below has preferred this revision petition challenging the conviction and sentence imposed on him for the offence under Section 138 of Negotiable Instruments Act.

2. The brief facts of the case is that on 01.12.2014 to construct his house the accused has borrowed Rs.1,00,000/- from the complainant as hand loan and promised to repay it within a week. But after a week instead of repaying the amount in cash, the accused has given post dated cheque for Rs.1,00,000/- drawn on Karur Vysya Bank, Sholinghur branch. The said cheque dated 19.12.2014 was presented for collection on 22.12.2014, but the cheque returned unpaid on 23.12.2014 with an endorsement “No sufficient fund”. After causing statutory notice and receiving the reply, where the accused has got six months time to pay the cheque amount, the complaint has been filed.



Crl.R.C.No.871 of 2020

WEB COPY

3. To prove the complaint, the complainant has marked 6 exhibits. In defence, the accused has examined the Manager of Karur Vysya bank as DW.1.

4. The Court below on appreciating the evidence, the cheque and the admission of the accused that he has borrowed the money, but sought time to repay the cheque amount, held the accused guilty of the offence under Section 138 of N.I.Act and sentenced him to undergo 3 months Simple Imprisonment and pay compensation of Rs.1,50,000/- within a period of one month, in default, 3 weeks Simple Imprisonment. Aggrieved by the conviction and sentence imposed by the trial Court, the accused preferred the appeal before the II Additional District and Sessions Court, Vellore at Ranipet.

5. After considering the grounds of appeal, the lower appellate Court confirming the judgment of the trial Court, since there is an admission of liability by the accused and the cheque has been given for the legally enforceable debt without sufficient fund and hence liable to be



Crl.R.C.No.871 of 2020

convicted.

6. The learned counsel appearing for the revision petitioner submitted that there is a procedural lapse in the complaint. In the reply notice, the accused has sought six months time for repayment and therefore, the complaint ought not to have been lodged without waiting six months. During the compromise talk in the police station, the complainant agreed to wait for six months and having agreed to wait for six months, he has estopped in lodging the complaint.

7. This Court is unable to countenance of the arguments, since the provision of Negotiable Instruments Act prescribes time limit for presentation of cheque, for causing statutory notice, on receipt of the intimation from the bank regarding dishonour of the cheque and time to lodge the complaint. Just because the accused has sought six months time to repay the cheque amount, the complainant cannot wait for six months and lose the limitation prescribed. The admission of the accused regarding the money received and issuance of cheque *per se* sufficient to



Crl.R.C.No.871 of 2020

convict the accused for not honouring the cheque issued for an enforceable liability.

8. As a result, this *Criminal Revision Case is dismissed.*

Consequently, the connected Criminal Miscellaneous Petitions are also dismissed.

05.06.2023

Internet : Yes/No

Index: Yes/No

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To

1.The II Additional District and Sessions Court, Vellore at Ranipet

2.The Judicial Magistrate, Sholighur

Dr.G.JAYACHANDRAN, J.



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Crl.R.C.No.871 of 2020

rpl

Crl.R.C.No.871 of 2020

05.06.2023