



Crl.R.C.No.931 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.06.2023

CORAM :

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

Crl.R.C.No.931 of 2020

and

Crl.M.P.Nos.6504 to 6506 of 2020

S.Govindan

.. Petitioner

Vs.

M.Chinnarasu

..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the judgment dated 23.06.2020 passed in C.A.No.214 of 2019 on the file of Principal Sessions Judge at Salem in confirming the judgment dated 26.09.2019 in S.T.C.No.1283 of 2013 on the file of Judicial Magistrate Court No.2, Sankari and acquit the petitioner.

For Petitioner : Mr.K.Myilsamy

For Respondent : Mr.T.N.Rangesh Kanna



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ORDER

This Criminal Revision Case is directed against the concurrent findings of the Courts below holding the revision petitioner guilty of issuing a cheque for a sum of Rs.5,00,000/-, but not arranged for realisation of the cheque amount in his bank account.

2. The sum and substance of the complaint is that the accused owed Rs.5,00,000/- to the complainant and to discharge the said legally enforceable debt, a cheque for Rs.5,00,000/- dated 24.07.2013 was issued in favour of the complainant. But, when the cheque was presented for collection through the complainant's bank namely Allahabad bank, Magudanchavadi branch on 24.07.2013, the cheque returned with an endorsement "Fund insufficient". On receipt of the intimation memo dated 29.07.2013, the complainant caused statutory notice to the accused on 08.08.2013. The notice was received by the accused on 12.08.2013 and no reply was received from the accused. Hence the complaint was presented before the Judicial Magistrate No.2, Sankari on 19.09.2013.



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3. The complainant mounted the witness box and marked 5 exhibits. The accused, in defence, mounted the witness box and marked 2 exhibits.

4. The contention of the accused is that the cheque was not issued for any debt. The defence taken by the accused through oral and documentary evidence is that he and the complainant were doing Real Estate business and in the course of business transaction, a blank cheque signed by the accused came to the custody of the complainant. In the year 2011, they entered into a sale agreement, which is marked as Ex.D1, but for some reasons, the agreement could not be fructified and hence they cancelled the agreement on 12.12.2014 vide document marked as Ex.D2. In between, the cheque which was given by the accused to the complainant been presented by filling it with date and amount.

5. The trial Court as well as the lower appellate Court rejected the said defence and held the accused is guilty of committing of offence under Section 138 of N.I.Act and sentenced him to undergo 6 months Simple Imprisonment and pay compensation of Rs.5,00,000/-, in default, to undergo one month S.I.



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6. The learned counsel for the revision petitioner submitted that right from inception, the complaint is defective and fit to be dismissed illumine. In the statutory notice, the complainant has failed to state how the legally enforceable debt mentioned in the notice arose and when it arose. Even in the complaint, the transaction, which led to issuance of subject cheque marked as Ex.P1, not explained. In the proof affidavit, the complainant has improved his case and stated about how and when he gave the money. Though he claimed that he is carrying on finance business, there is no material to show that he is a Registered Financier and he had given loan to the accused after obtaining document and reflected in his Statement of Accounts and income tax returns.

7. The learned counsel for the revision petitioner pointing out the deposition of PW.1 has admitted that he is not an income tax assessee and he has no document to show that he had source of income to advance a sum of Rs.5,00,000/- without any security. He has admitted that in his bank account, he had a maximum balance of Rs.60,000/- to Rs.70,000/- only and while the fact being so, the lower appellate Court has also substantially agreed that the complainant has not disclosed the source of



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income or the enforceable liability or proof for enforceable liability, the complaint ought to have been dismissed.

8. Thus, the learned counsel for the revision petitioner summoned up his arguments by saying that the notice without explaining how the debt occurred being defective and failure of the complainant to disclose the source of income to advance Rs.5,00,000/-, cumulatively renders the complaint unsustainable. The presumption drawn against the accused for not replying to the statutory notice is legally not sustainable. The defence by the accused can either be proved by reply notice or let in by oral or documentary evidence. Whereas in this case, the accused has mounted in the witness box subjected himself in the cross examination and also marked two exhibits, which probabalise the defence and therefore, the judgment of the Courts below has to be reversed.

9. This Court on considering the exhibits finds that the cheque [Ex.P1] dated 24.07.2013 given by the accused in favour of the complainant. The signature in the cheque is not denied by the accused. To deny the liability, two documents are relied by the accused. Those two



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documents were marked as Ex.D1 and Ex.D2. These two documents only prove the contractual relationship between the accused and the complainant, but nothing more.

10. In the said circumstances, as pointed out by the Courts below, failure to reply the statutory notice gains significance. Had the accused replied to the statutory notice, the complainant could have placed before the Court how the transaction between him and the accused arose and how the debt accrued for issuance of the cheque marked as Ex.P1. Therefore, though it is not mandatory or compulsory on the part of the accused to reply the statutory notice, the purpose of providing an opportunity to the accused to reply the statutory notice is to advance his defence and make the complainant to know about the defence.

11. As far as the contention raised by the learned counsel for the revision petitioner regarding the defect in the notice, on reading the Section 138 of N.I.Act, we find it only mandates to cause a notice demanding the cheque amount, which was returned without realisation. It



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does not mandate to narrate under what circumstances the cheque issued.

While so, reading the statutory notice marked as Ex.P4, this Court finds that the requirement under Section 138 of N.I.Act regarding causing notice is fully satisfied and there is no defect in the notice.

12. The complainant contends that the accused has no sufficient source. Contrarily, in the cross examination, the complainant says that he has three sources of income and he had advanced money from this incomes However, there is no documentary evidence to this effect.

13. As far as the offence under Section 138 of N.I.Act, apart from punishment, the Court is empowered to impose compensation twice the amount of the cheque as compensation. In this case the trial Court has imposed the cheque amount as compensation besides 6 months S.I. The lower appellate Court has confirmed it.

14. The learned counsel for the revision petitioner submitted



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that in case the revision petitioner is not able to convince the Court that the blank cheque has been misused and filled up as Rs.5,00,000/-. Atleast the compensation amount may be reduced.

15. Since there is no other document produced by the complainant to substantiate his claim that the cheque for Rs.5,00,000/- was issued for the debt and having consider the submissions made by the learned counsel for the revision petitioner, this ***Criminal Revision Case is partly allowed*** with the modification of the sentence that the respondent shall undergo imprisonment for a period of one month S.I., and to pay compensation of Rs.1,50,000/-, in default Simple Imprisonment for a period of 15 days. Consequently, the connected Criminal Miscellaneous Petitions are also closed.

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Internet : Yes/No

Index: Yes/No

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To
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- 1.The Principal Sessions Judge, Salem.
- 2.The Judicial Magistrate Court No.2, Sankari.

Dr.G.JAYACHANDRAN, J.



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