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Crl.R.C.No.1095 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

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THE HONOURABLE DR. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.1095 of 2020 and
Crl.MP.Nos.7613 of 2020 & 4403 of 2021

S.Manivannan

... Petitioner

Vs.

M.Thiruvassagam

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C. against the order dated 11.12.2019 in Crl.A.No.168 of 2019 on the file of the XVI Additional District and Sessions Court, Chennai confirming the judgment of trial court in CC.No.1322 of 2015 dated 22.03.2019 on the file of the Metropolitan Magistrate-FTC-II, Egmore at Allikulam, convicting the petitioner for an offence under Section 138 of NI Act sentencing him to one year simple imprisonment under Section 255(2) of Cr.P.C. directing the accused to pay compensation of Rs.14,00,000/- to the complainant under Section 357(3) of Cr.P.C. r/w 138 of NI Act within one month in default to undergo three months simple imprisonment.

For Petitioner : Mr.S.Kalyanaraman



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For Respondent : M/s.G.Nirmala

ORDER

This criminal revision has been filed against the order dated 11.12.2019 passed in Crl.A.No.168 of 2019 on the file of the XVI Additional District and Sessions Court, Chennai confirming the judgment in CC.No.1322 of 2015 dated 22.03.2019 on the file of the Metropolitan Magistrate-FTC-II, Egmore at Allikulam.

2. It is a case of a dishonoured cheque for Rs.7,00,000/- dated 16.06.2014 drawn by the accused in favour of the complainant to discharge his debt. Since on presentation, the cheque bounced back with endorsement 'insufficient fund', statutory notice was served on the accused and thereafter, the complaint under Section 138 of NI Act presented before Metropolitan Magistrate-V, Egmore. Later, the case was transferred to Metropolitan Magistrate (FTC-II), Egmore in CC.No.1322 of 2015.



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3. Before the trial court, to prove the content of the complaint, the complainant has mounted the witness box, deposed and marked four documents. Ex.P1 is the cheque dated 16.06.2014. Ex.P2 is the return memorandum from the bank dated 17.06.2014. Ex.P3 is the statutory notice dated 26.06.2014 and Ex.P4 is the proof for delivery of statutory notice.

4. The accused by way of cross examination of PW1 contended that the statutory notice was not served on him. The complainant has nowhere withdraw or source to advance Rs.7,00,000/-. He has not borrowed any money from the complainant and the subject cheque was not given by him to discharge any legally enforceable debt.

5. According to the accused, in Section 313 Cr.P.C. questioning, he has said that the complainant was a staff in an organization where he was working as Director. In connection with this employment, he used to travel extensively and therefore for the administrative reason, he used to leave signed blank cheques in the



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office. When he was transferred to Madurai and the branch at Chennai was closed, he did not care to get back the blank cheques left in the office. The complainant who has taken possession of the said cheque had misused the same by filling up his name and amount.

6. After questioning the accused on 10.07.2017, the accused has taken out an application under Section 315 and under Section 91 of Cr.P.C. and same was allowed. But he has not availed the said opportunity. The trial court on appreciating the evidence let in by the complainant as well as the defence taken by the accused while he was questioned under Section 313 of Cr.P.C., allowed the complaint, convicted the accused for offence under Section 138 of NI Act and sentenced him to undergo one year simple imprisonment and pay twice the cheque amount i.e. Rs.14,00,000/- as compensation.

7. Aggrieved by the judgment of the trial court, the accused preferred criminal appeal in Crl.A.No.168 of 2019 before the XVI Additional District and Sessions Court, Chennai. The lower appellate



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court considering the grounds of appeal and the submissions made by the respective counsel, found no merit in the appeal and hence dismissed the appeal confirming the conviction and sentence passed by the Trial court.

8. In this revision, the learned counsel appearing for the accused contended that the courts below without proof of fundamental fact, had presumed the cheque marked as Ex.P1 was given by the accused to discharge a enforceable debt. The probability of misusing the said cheque while the accused serving at Madras branch as Director and the complainant as staff in that firm not been properly appreciated. The counsel also submitted that there is no adequate proof that the statutory notice was served on the accused. Particularly the counsel submitted that the complainant has not proved his source to advance sum of Rs.7,00,000/-. Further, when the accused sought for leave to adduce evidence on his behalf and to call for the bank statement the application was allowed by the trial court, however, even before adducing evidence and producing the document, in haste, the trial court closed the case and delivered judgment without hearing the accused and without affording adequate opportunity to defend.



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9. The learned counsel appearing for the complainant submitted that regarding the source, extensive cross examination was made by the accused and PW1 in his deposition has explained the source of income and how Rs.7,00,000/- was advanced to the accused. Further, the statutory notice calling upon the accused to pay cheque amount or he will face consequence under Section 138 of NI Act was duly served on the accused and postal acknowledgment to prove service is filed as Ex.P4. In spite of receipt of the notice, the accused did not pay the cheque amount or reply with reasoning why the cheque is not enforceable.

10. During the trial, the accused after closing the complainant side evidence and court adjourned the matter for Section 313 (1) (b) of Cr.P.C. questioning on 29.06.2016, did not attend the court and remained absent. Hence NBW was issued against him. He after one year surrendered and recalled the warrant. Even thereafter, he did not take steps to adduce defence evidence or call for records immediately. Only after one year, he filed two applications to examine defence witness and



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to call for records under Section 91 of Cr.P.C. The same was allowed.

However, he did not adduce any defence evidence inspite of repeated adjournments.

11. The accused remained absent, forcing the trial court to issue NBW on 29.06.2016. The warrant was recalled by the accused on 17.10.2018. Thereafter till 22.02.2019, the accused did not show any interest in adducing defence evidence. In the said circumstances, after affording few more adjournments, the learned Magistrate reserved the case for orders and delivered judgment on 22.03.2019.

12. To highlight the said facts, the learned counsel for the respondent referred the lower appellate court judgment which has narrated the facts as above. On perusal of records will clearly prove that the accused took time, but did not avail the opportunity afforded to him.

13. Heard both the counsels and records perused.



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14. The signature and the cheque from the account maintained by the accused is admitted. It is the contention of the accused that when he was transferred to Madurai, signed blank cheque which was left in his office at Chennai, was misused by the complainant. The cheque is from the account maintained in the personal name of the accused. While so, his defence that blank cheque left in the office to meet out exigency in his absence does not carry any merit and this contention is not been corroborated by any evidence. Also, it is not correct to say that the accused was not afforded opportunity to defend his case. The finding of the lower appellate court clearly indicates that in spite of affording opportunity from 2016 to 2019, the accused has not come forward to produce any evidence in support of his defence.

15. It is contended by the counsel for the revision petitioner that foundational fact not proved in this case but the response to the extensive cross examination of PW1 by the accused and the documentary evidence placed by the complainant establish the required fundamental fact that the subject cheque was issued to the complainant by the accused. The



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complainant had enough source to advance Rs.7,00,000/- from his earning and savings. The cheque presented for collection, returned for insufficient fund and when the complainant informed about this fact through statutory notice-Ex.P3, the accused had not come forward to explain and put forth his defence. For the said reason, the trial court and the lower Appellate Court has held that the accused guilty. This Court finds no error or irregularity or impropriety in the judgment of the courts below. A reasoned order based on the record, been passed by the trial court as well as the lower appellate court. Therefore, there is no reason to interfere by this Court in exercise of power under Section 397 r/w 401 Cr.P.C.

16. The learned counsel for the petitioner submitted that in any event, compensation of twice the cheque amount is excessive since the punishment of one year simple imprisonment been imposed on the accused for issuing cheque without sufficient fund. This Court taking note of the fact that the accused having borrowed the money in the month of January 2013 and given the cheque to discharge debt in the year 2014,



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but had not taken any genuine effort to honour the cheque, cannot seek leniency after ten years from accrual of the liability. However, in order to provide him an opportunity to adequately compensate the complainant who advance Rs.7,00,000/- to him 10 years ago and waiting to see the fruits, the sentence is modified to the effect that the petitioner / accused shall pay a sum of Rs.10,50,000/- within a period of one month from the date of receipt of the order, in default to undergo three months simple imprisonment.

17. With this modification of sentence, confirm the conviction of the courts below. Accordingly, this criminal revision is partly allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

27.04.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order

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To

1. The XVI Additional District and Sessions Court,
Chennai
2. The Metropolitan Magistrate-FTC-II,
Egmore at Allikulam



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Dr.G.JAYACHANDRAN, J

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