



Crl.R.C.No.1551 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.R.C.No.1551 of 2023

N.Ravi ... Petitioner

Vs.

S.Velayudham ... Respondent

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the judgment passed by the XXII Additional City Civil Court Judge, Chennai in Crl.A.No.118/2022 dated 10.01.2023 dismissing the appeal and confirming the judgment dated 17.06.2022 in C.C.No.1901/2019 passed by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai.

For Petitioner : Mr.V.Govindaraj

For Respondent : Mr.F.Wellington

ORDER

Challenge in this criminal revision case is made to the judgement and orders passed by the learned XXII Additional City Civil Court, Chennai in Crl.A.No.118/2022 in and by which the conviction and sentence passed by the learned Metropolitan Magistrate, Fast Track



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Court No.IV, George Town, Chennai, in C.C.No.1901/2019, was confirmed.

2.The case of the complainant is that the revision petitioner/accused borrowed a sum of Rs.25,00,000/- from the complainant and issued a cheque bearing No.712796 dated 17.07.2019 (Ex.P2) for the said amount drawn on Canara Bank, Tondiarpet Branch, Chennai in favour of the complainant. When the complainant presented the cheque for collection on 18.07.2019 through his banker, viz., Karur Vysya Bank, Main Branch, Chennai, the cheque was returned for the reason 'Funds Insufficient' as is seen from the cheque Return Memo dated 19.07.2019 (Ex.P3). Therefore, the complainant issued a legal notice dated 29.07.2019 (Ex.P4) to the accused demanding the latter to pay the amount due under the cheque. Though the said legal notice was served on the accused on 30.09.2019 as is seen from the postal acknowledgement card (Ex.P5), he did not come forward to make good the payment. He did not also send a reply to the complainant.



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3.The complainant therefore filed a private complaint before the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai under Section 200 Cr.P.C. against the respondent/accused for an offence punishable under Section 138 of the Negotiable Instruments Act (N.I. Act) in C.C.No.1901/2019. The learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. Act) and issued summons to the accused/respondent and on his appearance, furnished copies of records under Section 207 Cr.P.C. When the respondent/accused was questioned with regard to the substance of accusation made against him, he pleaded not guilty and the case was therefore posted for trial.

4.The complainant examined himself as PW.1 and marked Ex.P1 to Ex.P5. When the accused was questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, the accused denied of having committed any



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offence. However, the accused did not adduce any oral / documentary evidence on his side.

5.After analysing the evidence on record, the learned trial court judge found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act, convicted and sentenced him as detailed hereunder.

<i>S.No.</i>	<i>Offences under which convicted</i>	<i>Sentence</i>
1	Section 138 of N.I. Act	Simple imprisonment for three months and to pay a sum of Rs.25,00,000/- as compensation to the complainant u/s.357(3) Cr.P.C., within one month.

6.Aggrieved over the same, the accused filed an appeal in CrI.A.No.118/2022 before the XXII Additional City Civil Court, Chennai. The learned XXII Additional City Civil Court Judge, Chennai, after analysing the evidence on record, confirmed the findings recorded by the Trial Court Judge and dismissed the appeal. Now the present criminal revision is filed by the complainant seeking enhancement of



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7. Mr.V.Govindaraj, learned counsel for the revision petitioner contended that though the cheque amount is Rs.25,00,000/- till date no amount is paid by the accused to the complainant. He would further contend that though the trial court directed the accused to pay the amount within a period of one month, it was not complied with by the accused. This was also brought to the notice of the Appellate Court by way of filing a memo. According to him, the Appellate Court did not consider the same as no direction was given to the accused to repay the cheque amount. It is also his contention that when the amount is Rs.25,00,000/- both the Courts below had not sentenced the accused adequately and therefore, sought for enhancement of sentence imposed on the accused.

8.Per contra, Mr.F.Wellington, learned counsel for the respondent contended that the accused had already undergone imprisonment for a period of three months and both the Courts below had directed the accused to pay a sum of Rs.25,00,000/- as compensation to



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the complainant. According to him, the accused has no wherewithal to pay the said amount. His specific contention is that sentence awarded by both the Courts below cannot said to be disproportionate to the offence committed by the accused.

9.A perusal of the memo filed by the revision petitioner before the Appellate Court shows that the complainant had brought to the knowledge of the Appellate Court about the non compliance of the orders of the trial court by the accused. Though the memo is dated 27.09.2022 there is absolutely no reference about this memo in the judgement passed by the learned XXII Additional Judge, City Civil Court, Chennai.

10.Be that as it may, both the Courts had found the accused guilty of the offence punishable under Section 138 of N.I. Act and sentenced the accused to undergo simple imprisonment for a period of three months and to pay a sum of Rs.25,00,000/- towards compensation under Section 357 Cr.P.C. to the complainant. The grievance of the revision petitioner is that the accused did not pay even a single pie till



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date. If no amount is paid as per the directions of both the courts below, the trial court has to initiate action under the Revenue Recovery Act by invoking the Provisions of Section 431 Cr.P.C.

11.With the above observation, the Criminal Revision is disposed of.

12.09.2023

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



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R. HEMALATHA, J.
mtl

To

- 1.The XXII Additional City Civil Court, Chennai.
- 2.The Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai.

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