



Crl RC .No.775 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl RC No.775 of 2003

V.M.Periasamy

... Petitioner/Complainant

Vs.

V.P.Venkatachalam

... Respondent / Accused

Prayer : Criminal Revision case is filed under Section 397 r/w 401 of Cr.PC against the order of remand passed by the learned First Additional Sessions Judge cum Chief Judicial Magistrate, Erode in C.A.No.44 of 2003 dated 23.04.2003.

For Petitioner : Mr.C.R.Malarvannan
for MR.N.Mohideen Basha
For Respondent : Mrs.H.Kavitha
for M/s.Kaithamalai Kumaran



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ORDER

This Criminal Revision case has been filed against the judgement and order passed by the 1st Additional Sessions Judge, Erode in Crl.A.No.44 of 2001 dated 23.04.2003, remanding the case to the file of the Trial Court.

2. The petitioner /complainant filed a private complaint against the respondent on the ground that the respondent borrowed a sum of Rs.2,40,000/- [Rupees two lakhs forty thousand only] from the petitioner and towards the said debt, issued the cheque dated 02.11.1996 (Ex.P1). When this cheque was presented for collection by the petitioner, the same was returned with an endorsement “insufficient funds”. The petitioner therefore issued a legal notice dated 29.04.1997 to the respondent calling upon the respondent to pay the cheque amount. The respondent inspite of receipt of the legal notice, did not pay the cheque amount and hence, the



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complaint was filed by the petitioner against the respondent for offence under Section 138 of the Negotiable Instruments Act.

3. The respondent primarily took three grounds as defense. The first ground was that there is material alteration in the cheque. According to the respondent, the year that is mentioned in the cheque as 96 has been altered. That apart, Rs.24,000/- which was mentioned, was struck off and it was altered as 2,40,000/- in numbers. In view of the same, the respondent took a stand that there is material alteration which renders the cheque *non-est* in the eye of law.

4. The second ground that was raised by the respondent was that there was no legally enforceable debt / liability towards which any cheque was issued to the petitioner.



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5. The third ground that was raised by the respondent was that the petitioner did not file any documents to prove that there was a transaction between the petitioner and the respondent.

6. The Trial Court on considering the evidence available on record and the defense taken by the respondent, came to a conclusion that the respondent has not rebutted the legal presumption under Section 139 of the Negotiable Instruments Act. Accordingly, by judgement dated 07.03.2001, the respondent was convicted for offence under Section 138 of the Negotiable Instruments Act and was sentenced to undergo three months simple imprisonment and to pay a fine of Rs.5,000/- and in default to undergo one month simple imprisonment. Out of the total amount of Rs.5,000/- which was fixed as fine, Rs.4,000/- was directed to be paid to the petitioner as compensation.



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7. Aggrieved by the above judgement passed by the Trial Court, the respondent filed an appeal before the I Additional Sessions Judge, Erode. The Appellate Court came to a conclusion that there is material alteration in the subject cheque which requires an expert opinion and accordingly, the Appellate Court without going into any of the other grounds, remanded the matter back to the file of the Trial Court. Aggrieved by the same, the petitioner / complainant has filed the present Criminal Revision case.

8. Heard Mr.C.R.Malarvannan, learned counsel for the petitioner and Mrs.H.Kavitha, learned counsel for respondent.

9. The present case is a sample of how proceedings under Section 138 of the Negotiable Instruments Act are being dealt with by Courts and as to how it has not effectively fulfilled the object



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behind the enactment. The proceedings were initiated in the year 1997 and the cheque amount is Rs.2,40,000/- and the proceedings have been dragged on for nearly 26 years. It is quite disappointing that the criminal revision which was filed in the year 2003 has come up for hearing after nearly 20 years. This is in view of the fact that the original bundle went missing and it was reconstructed and ultimately, posted for final hearing.

10. The Appellate Court after considering EX.P1-cheque has come to a conclusion that there is material alteration in the cheque and hence, the matter was remanded back to the file of the Trial Court. To come to this conclusion, the Appellate Court has given a finding as if the signature found when the amount was altered as Rs.2,40,000/- does not tally with the signature found in the cheque. To come to this conclusion, the Appellate Court does not even reason out as to why such a finding was rendered. These



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findings cannot be rendered on subjective satisfaction and a Court is supposed to give its reasons even if it exercises its jurisdiction under Section 73 of the Evidence Act. It is an admitted case that the number changed as 2,40,000/- was in line with rupees in words where it has been correctly mentioned as “Rupees Two lakhs Forty thousand only”. The Appellate Court failed to see that where there is a variance between the number and the words, the rupees in words will assume significance and the same must be taken into consideration. Even this fundamental principle was thrown to the winds by the Appellate Court.

11. The next finding rendered by the Appellate Court is with regard to the so called alteration made to the year that is mentioned in the cheque. According to the Appellate Court, the respondent / accused took a stand that the number “6” in “96” was



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scratched and altered. If that is the case, the respondent should have taken effective steps even before the Trial Court to send the cheque for expert opinion. If the same is not done, the same cannot be permitted to be done at the appellate stage without any valid reasons. The Trial Court had the advantage of looking at the original cheque and a finding has been rendered to the effect that number “6” has not been scratched. In the light of such a finding, the Appellate Court ought not to have interfered with the same and remanded the matter back to the file of the Trial Court for getting expert opinion.

12. It is quite unfortunate that even assuming that an additional evidence is required, the Appellate Court itself has such a power under Section 391 of Cr.PC. Hence, it is not necessary that every time a matter has to be remanded back to the Trial Court if



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any additional evidence is required.

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13. In the light of the above discussion, this Court has absolutely no hesitation to interfere with the judgement and order passed by the Appellate Court in Crl.A.No.44 of 2001, dated 23.04.2003 and the same is hereby set aside.

14. The matter is remanded back to the file of the I st Additional Sessions Judge, Erode and there shall be a direction to the concerned Court to dispose of Crl.A.No.44 of 2001 on or before 28.04.2023. A compliance report shall also be filed before this Court. Any observations or findings made by this Court in this Criminal Revision case will not have any bearing on the Appellate Court and the Appellate court shall independently deal with the appeal and proceed further in accordance with law and pass final judgement within the time stipulated by this Court. The original



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records have been sent back to the Trial Court since the matter was remanded. The Trial Court is directed to immediately send the entire original records to the Appellate Court within a period of one week from the date of receipt of a copy of this order.

15. In the result, this Criminal Revision case is allowed with the above directions. No costs.

07.03.2023

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
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N. ANAND VENKATESH, J.

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To

1. 1st Additional Sessions Judge, Erode,
2. Judicial Magistrate No.2, Erode

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