IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

Crl.R.C.No.1336 of 2023 &

Crl.M.P. No.11025 of 2023

K. Govindarajan ...Petitioner

Vs.

P. Sampath ... Respondent

Prayer : Criminal Revision Petition filed under Section 397 and 401 Cr.P.C. against the judgment dated 06.07.2023 passed in C.A. No.54 of 2019, on the file of the III Additional District and Sessions Judge (FAC), Dharapuram, confirming the judgment dated 29.04.2019 passed in C.C. No.71 of 2014 , on the file of the Judicial Magistrate, Dharapuram.

For Petitioner : Mr.W.M. Abdul Majeed

ORDER

Challenging the Judgment dated 06.07.2023 passed in C.A. No.54 of 2019, on the file of the III Additional District and Sessions

Judge (FAC), Dharapuram, confirming the judgment dated 29.04.2019 passed in C.C. No.71 of 2014, on the file of the Judicial Magistrate, Dharapuram, the present petition is filed.

2. This Criminal Revision Case is posted today before this court for admission and the same is decided at the admission stage itself.

3. For the sake of convenience the petitioner herein is referred to as accused and the respondent as complainant.

4. The case of the complainant in nutshell is as follows:

i. The accused borrowed a sum of Rs.8 lakhs on 20.11.2011 for his urgent family expenses and executed a Promissory Note (Ex.P1) on the same day promising to repay the principal together with interest at the rate of 12% per annum on demand by the complainant or to his order.

ii. On 22.12.2013, when the complainant demanded the accused to repay the amount, the accused issued a cheque bearing No.508192 dated 23.12.2013 drawn on ICICI bank, Dharapuram Branch (Ex.P2) for Rs.10,00,000/-.

iii. When the cheque (Ex.P1) was presented by the complainant for collection through his banker namely Karur Vysya Bank, Mulanur Branch on 23.12.2013, the same was returned on 26.12.2013 for the reason "Insufficient funds", as is seen from the cheque return memo (Ex.P3).

iv. Therefore, the complainant issued a statutory notice dated 21.01.2014 (Ex.P4) to the accused calling upon the latter to repay the amount due under the promissory note and cheque.

v. The accused received the said notice as is evidenced by the postal acknowledgement card (Ex.P5). However, he did not come forward to make good the payment. On the other hand, he sent a reply notice (Ex.P6) dated 04.02.2014 with false allegations.

vi. Therefore, the complainant filed a complaint in C.C. No.71/2014 before the Judicial Magistrate, Dharapuram.

vii. The learned judicial Magistrate, Dharapuram, took cognizance of the offence and issued summons to the accused under Section 204

Cr.P.C.

viii. On the appearance of the accused, copies of documents were furnished to him under Section 207 Cr.P.C.

ix. When the accused is questioned with regard to the substance of accusations made in the complaint, he pleaded not guilty. Therefore, the case was posted for trial.

x. The complainant examined himself and marked Ex.P1 to Ex.P6.

xi. The circumstances appearing in evidence against the accused were put to the accused and he was questioned under Section 313 Cr.P.C. The accused denied of having committed any offence. He examined himself as D.W.1 and one another witness and marked Ex.D1 and Ex.D2.

xii. The learned trial court judge, after analysing the oral and documentary evidence adduced on both sides, convicted the accused for the offences punishable Under Sections 138 r/w 142 of negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year.

xiii.Aggrieved over the same, the accused filed an appeal in C.A.No.54 of 2019 before the III Additional District and Sessions Court, Dharapuram. The learned III Additional District and Sessions Judge, Dharapuram, after hearing the arguments on both sides and appreciating the evidence on record, dismissed the appeal filed by the accused and confirmed the judgment passed by the learned judicial Magistrate, Dharapuram.

xiv.Now the present Criminal Revision case is filed by the accused.

5. Mr.W.M. Abdul Majeed, learned counsel for the revision petitioner contended that the complainant had not proved his wherewithal to lend a sum of Rs.8 lakhs to the petitioner/accused and that though the accused examined the bank Manager and also filed a copy of the statement of accounts of the complainant, both the courts below did not properly appreciate the evidence and had convicted the accused for the offences punishable Under Section 138 r/w 142 of negotiable Instruments Act. His further contention is that the accused had actually handed over two signed unfilled blank cheques drawn on ICICI bank and two

pronotes to the wife of the complainant during the year 2012, who was running a chit fund along with the complainant and that the said signed pronotes and one of the cheques had been misused by the complainant.

6. At the outset, it may be observed that the accused had not denied his signature on the cheque Ex.P2. Once the signature is admitted there is a presumption under Sections 118 and 139 of the Negotiable Instruments Act unless the contrary is proved by the accused. In the instant case, in order to rebut the presumption, the accused examined himself and also the Manager of Karur Vysya Bank, where the complainant is having an account and also produced the bank statement of the complainant. According to the accused, the complainant did not have any wherewithal to lend a sum of Rs.8 lakhs to the accused. At this juncture it is pertinent to point out that the complainant has not claimed that he had withdrawn the money from his bank account to advance the loan amount to the accused. In fact, the complainant during the course of cross examination had specifically deposed that he had advanced the loan from the amount which he had set apart for purchasing an immovable property. In the circumstances, the evidence of the bank Manager and

the statement of Accounts (Ex.P4) are least useful to the case of the accused.

6.1. The accused did not adduce any acceptable evidence to show that the complainant along with his wife was running a chit transaction and that during the year 2012 he handed over two signed blank cheques and two unfilled Pronotes to the wife of the complinant and that one of the cheques had been misused by the present complainant. Merely based on Ex.D1, which is a certified copy of the registration certificate of the firm 'Mulanur Senthur Murugan Financiers', in which the present complainant and others were shown to be running a finance business till the year 2002, it cannot be held that the accused had rebutted the presumption. Even assuming that the contention of the accused in this regard is true, Section 20 of the Negotiable Instruments Act comes into operation which reads thus:

Section 20 in The Negotiable Instruments Act, 1881

20. Inchoate stamped instruments.—Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments *then in force in 1[India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.*

7. A perusal of the judgment passed by both the courts below shows that both the courts below had, by a well considered judgment, convicted the accused for an offence punishable under Section 138 of the Negotiable Instruments Act and this court does not find any reason to interfere with the same. The sentence passed by both the courts is also perfectly in order.

8. In the result,

i. the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

ii. the judgment dated 06.07.2023 passed in C.A. No.54 of 2019, on the file of the III Additional District and Sessions Judge (FAC), Dharapuram, and the judgment dated 29.04.2019 passed in C.C.No.71 of 2014, on the file of the Judicial Magistrate, Dharapuram, are confirmed.

iii. The petitioner in Crl.RC. No.1336 of 2023 (accused in C.C. No. 71/2014), shall surrender before the learned Judicial Magistrate, Dharapuram, within 15 days from the date of receipt of the order copy, failing which, the Trial Court shall take steps to secure him for undergoing the period of sentence.

28.07.2023

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

bga

R. HEMALATHA, J.
bga

To

1. The III Additional District and Sessions Judge (FAC),
   Dharapuram.

2. The Judicial Magistrate, Dharapuram

Crl.R.C.No.1336 of 2023 &
Crl.M.P. No.11025 of 2023

28.07.2023