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Crl.R.C.No.846 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 19.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

Crl.R.C.No.846 of 2019

Sivakumar

... Petitioner

vs.

Ramaiya

... Respondent

PRAYER:- This Criminal Revision Case had been filed under Section 397 and 401 of the Code of Criminal Procedure, to set aside the order dated 21.09.2017 passed by the Hon'ble Principal District and Sessions Judge at Tiruppur in Crl.A.No.25 of 2017 against order dated 27.01.2017 in C.C.No.381 of 2015 on the file of the Fast Track Court, Tiruppur.

For Petitioner : Mr.M.Mohamed Saifulla
Legal Aid Counsel

For Respondent : No appearance

ORDER

This Criminal Revision Case had been filed by the Accused against the judgment of conviction in C.C.No.381 of 2015 by the learned Judicial Magistrate, Fast Track Court, (Magisterial Level), Tiruppur imposing sentence of one year imprisonment and fine of Rs.1,000/- (Rupees One Thousand only)



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which was confirmed in appeal by the learned II Additional District and Sessions Judge, Tiruppur in Crl. A.No.25 of 2017 by judgment dated 21.09.2017.

2.The brief facts, which are necessary for disposal of this Criminal Revision Case, are as follows:

2.1.The Respondent in this Criminal Revision Case is the Complainant. The Respondent as Complainant had filed private complaint in C.C.No.381 of 2015 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tiruppur. As per the complaint, the Revision Petitioner was known to the Respondent. They were acquaintance. On 06.11.2013 the Revision Petitioner had borrowed Rs.2,00,000/- for developing his business from the Respondent. The amount was borrowed with an understanding that he will repay the same after a month. The Complainant had handed over Rs.2,00,000/- in his home. The same was received by the Accused on 06.11.2013 for which he had handed over a cheque bearing No.902880 drawn on Catholic Syrian Bank, Kumaran Road, Tiruppur, to the Complainant. After verifying with the Accused, the Complainant had presented the cheque on 06.12.2013. When the cheque was presented before the Complainant's bank – Canara Bank, Anupparpalayam Pudur Branch, Tiruppur District, the same was



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returned with endorsement “insufficient funds”. Therefore, the Complainant had issued statutory notice on 17.12.2013 to the Accused directing him to pay the amount in cash within fifteen days from the date of receipt of notice. The notice was sent through Registered Post and it was received by the Accused on 20.12.2013. Even though the Complainant directed the Accused to settle the dues within fifteen days from the date of receipt of notice, he did not send any reply or settle the dues. Therefore, the Complainant had approached the Court of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tiruppur and filed private complaint against the Accused. The learned Judicial Magistrate recorded the sworn statement of the Complainant. Perused the document filed along with the complaint and taken cognizance of the complaint on file and numbered the case as C.C.No.381 of 2015. The learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tiruppur, had also issued summons to the Accused. On receipt of summons, the Accused appeared before the Court. The Accused was furnished with copies under Section 207 of Cr.P.C. and questioned regarding the offence under Section 138 of Negotiable Instruments Act. Since the Accused denied the charge under Section 138 of Negotiable Instruments Act, the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tiruppur, ordered trial. During trial, the Complainant himself examined as P.W-1. He had marked documents under Ex.P-1 to Ex.P-



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5. Ex.P-1 is the cheque issued by the Accused bearing No.902880 drawn on Catholic Syrian Bank, Kumaran Road, Tiruppur, dated 06.12.2013. Ex.P-2 is the memo issued by the Bank regarding “insufficient funds” dated 07.12.2013. Ex.P-3 is the copy of the statutory notice dated 17.12.2013 issued to the Accused. Ex.P-4 is the acknowledgment card regarding receipt of the statutory notice by the Accused. Ex.P-5 is the Promissory Note executed by the Accused in favour of the Complainant. After completion of the Complainant's evidence, the Accused was questioned under 313 of Cr.P.C. against the incriminating evidence against the Accused. The Accused denied the incriminating evidence. After examination of the Accused under 313 of Cr.P.C., the Accused himself let in evidence as D.W-1. The Accused also examined two of his acquaintances namely one Venkatachalam who was examined as D.W-2 and one Gopinath who was examined as D.W-3. It is the defence of the Accused that in 2013 December, he had approached one Venkatachalam to sell Indica Car belonging to the Accused. The said Venkatachalam had introduced the Complainant for selling of the car. The Complainant informed the Accused that there is no demand for Indica Car. Anyhow, as the Accused wanted immediate monetary help, the Complainant had advanced Rs.40,000/- as loan for which he demanded interest at the rate of Rs.2,000/- per week. Accordingly, the Accused handed over his Car with R.C. Book to the Complainant and he had settled the



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dues in six months time. The blank cheque duly signed and handed over to the Complainant was filled up and presented before the Bank. Even though the Accused had settled the dues, the Complainant did not return the cheque. Subsequently, the complainant preferred a complaint with the Police through the influence of a political party leader. Based on the complaint, the Anupparpalayam Police summoned the Accused. On reaching the Police Station only, the Accused came to know that based on the complaint of the Complainant for the borrowal of the loan and repayment of loan, the Complainant had preferred a complaint and under duress the police officials obtained blank cheque from the Accused which was latter filled up and the case under 138 of Negotiable Instruments Act was filed.

2.2.On appreciation of evidence, the learned Judicial Magistrate, Fast Track Court, (Magisterial Level), Tiruppur, had by judgment dated 27.01.2017 in C.C.No.381 of 2015 convicted the Accused by imposing sentence of imprisonment of one year and fine of Rs.1,000/-. Aggrieved by the judgment of conviction recorded by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tiruppur in C.C.No.381 of 2015, the Accused had preferred Crl.A.No.25 of 2017 before the learned II Additional District and Sessions Judge, Tiruppur. The learned II Additional District and Sessions Judge,



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Tiruppur, by judgment dated 21.09.2017 dismissed the Criminal Appeal No.25 of 2017 thereby confirming the judgment of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tiruppur in C.C.No.381 of 2015. Aggrieved by the same, the Accused had preferred this Criminal Revision Case.

3.As per the provision of 138 of Negotiable Instruments Act the cheque amount is to be imposed as compensation. Here instead of cheque amount, only Rs.1,000/- was imposed as fine. The learned II Additional District and Sessions Judge, Tiruppur, also ignored the provisions of law. When the Special Act insists for payment of compensation or fine as per the cheque amount, the learned Magistrate has no authority to defeat the parliamentary intent. Therefore, the judgment of conviction in C.C.No.381 of 2015 by the learned Judicial Magistrate, Fast Track Court, (Magisterial Level), Tiruppur imposing sentence of one year imprisonment and fine of Rs.1,000/- (Rupees One Thousand only) which was confirmed in appeal by the learned II Additional District and Sessions Judge, Tiruppur in Crl. A.No.25 of 2017 by judgment dated 21.09.2017, is to be set aside.

4.For the present, **this Criminal Revision Case is dismissed**. The learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tiruppur, is directed



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to pass proper sentence regarding the cheque amount and not fine as per the provisions of 138 of Negotiable Instruments Act. The learned Judicial Magistrate, Fast Track Court, (Magisterial Level), Tiruppur, is directed to impose compensation of Rs.2,00,000/- (Rupees Two Lakhs only) as per Section 357 of Cr.P.C. and issue fresh sentence and then issue warrant to secure the Accused.

The learned Principal District Judge and learned Chief Judicial Magistrate, Tiruppur, is directed to issue proper instructions to the Magistrates dealing with the cheque cases. The learned Chief Judicial Magistrate, Tiruppur, is also directed to supervise the Magistrates dealing with the cases under Section 138 of Negotiable Instruments Act to impose proper sentence in the light of the provisions of 138 of Negotiable Instruments Act imposing cheque amount as compensation along with sentence of imprisonment imposing cheque amount as compensation along with sentence of imprisonment.

Index : Yes / No
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SATHI KUMAR SUKUMARA KURUP, J.

SRM

To

- 1.The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Tiruppur.
- 2.The Principal District Judge,
Tiruppur. **(For supervision of Magistrates regarding sentences)**
- 2.The II Additional District and Sessions Judge,
Tiruppur.
- 3.The Chief Judicial Magistrate,
Tiruppur.

**Order made in
Crl.R.C.No.846 of 2019**

19.09.2023