



Crl.R.C.No.1097 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.06.2023

PRONOUNCED ON : 10.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.1097 of 2019
and Crl.M.P.No.14843 of 2019

K.P.Anandhee

... Petitioner/Accused

-Vs-

K.Ravikumar

... Respondent / Complainant

PRAYER: Criminal Revision Case is filed under Section 397 & 401 of Cr.P.C., against the judgment dated 05.03.2019 passed in Crl.A.No.92 of 2018 on the file of the learned Additional District Judge, (Fast Track Court), Vellore, Vellore District modifying the judgment dated 11.04.2012 passed in C.C.No.461 of 2011 on the file of the learned Judicial Magistrate (FTC), Vellore, Vellore District.

For Petitioner : Mr.P.A.Sudesh Kumar

For Respondent : Mr.S.Raja Ravi Varma



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ORDER

The accused is the revision petitioner herein.

2. Short facts leading to the filing of the revision case, is as follows:

(i) The respondent herein filed a complaint in C.C.No.461 of 2011 before the learned Judicial Magistrate (FTC), Vellore, Vellore District, based upon Ex.P.2-Cheque.

(ii) According to the complaint, the Respondent herein is working as a Manager in Vijay Shree Jewellers, which is owned by one Sarjanraj. The Revision Petitioner herein has borrowed a sum of Rs.4,00,000/- and issued cheque in question and the same was dishonoured and hence, the Complainant filed the complaint.

(iii) After following the procedure, the trial Court acquitted the Revision Petitioner. Aggrieved against the same, the Complainant has



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preferred Crl.A.No.92 of 2018 before the learned Additional District Judge (Fast Track Court), Vellore.

(iv) On Appeal, the lower Appellate Court has confirmed the order of acquittal, with the modification to pay admitted amount of Rs.2,66,720/- as that of compensation. As against the said order of payment of compensation by the lower Appellate Court, the present Revision Petition has been filed.

3. The learned counsel for the Revision Petitioner invited my attention to Section 142 of Negotiable Instruments Act and could contend that the private complainant is neither a payee nor holder in due course of the cheque and hence analogue of drawing of Section 142 does not arise. The Complainant filed the case as a Manager of the payee. The learned counsel for the Petitioner could further contend that the complaint is not maintainable.



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4. Heard the learned counsel appearing on either side and perused the documents.

5. The respondent herein is one K.Ravikumar, who claims to be the Manager of Vijay Shree Jewellers. He instituted the private complaint based upon the authorisation letter. For the reasons best known it appears that the complaint has been taken on file, which is discussed infra.

6. As per the private complaint, as well as the evidence of PW1, the facts of the case is as follows:

(i) The complainant has examined himself as PW1. According to him he is working as a Manager in Vijay Shree Jewellers. His owner has given authorisation letter under Ex.P1 to him for filing this complaint. The accused during July 2007 borrowed a sum of Rs.4 lakhs and agreeing to repay it in two months she has executed a promissory note for the same. On 20.10.2007 he and his owner have went to the accused house and demanded



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the payment of the principal amount with interest. The accused has issued Ex.P2 the cheque bearing No.707274 for Rs.4,08,000/- and has got back the promissory note executed by her.

(ii) On 23.10.2007 the complainant presented the cheque for collection through his banker Dhanalakshmi Bank, Vellore. The cheque was returned for want of sufficient funds on 24.10.2007 under Ex.P3 the return memo. Therefore, the complainant has issued a notice under Ex.P4 on 01.11.2007. The Accused has received the notice sent through registered post and the acknowledgment card therefor is Ex.P5. The receipt for sending the notice through certificate of posting is Ex.P6. The Accused on 19.11.2007 has issued a reply notice under Ex.P7, wherein she has prayed time for the payment of the amount till January next. The accused did not pay the cheque amount as demanded and hence, PW1 has prayed that the accused be punished in accordance with law.



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7. The revision petitioner accused has denied the alleged loan transaction, execution of the promissory note in favour of the complainant and issuance of Ex.P2-Cheque for the discharge of the alleged loan.

8. The trial Court has taken into consideration of the above fact and has rightly held that the burden is on the complainant first to prove the existence of legally enforceable debt and issuance of cheque for the discharge of the said debt.

9. The trial Court rendered a finding that PW1 complainant has collected money from his friends and relatives and gave Rs.4 lakhs to the accused as loan for which the accused has executed the promissory note and accordingly, it has to be inferred that the accused approached the complainant Ravikumar and obtained the loan from him. While the very same owner of the Vijaya Shree Jewellers was examined as DW1 on court witness summons, he deposed that the accused is his close friend and the



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loan was given by DW1 and not by the complainant and accordingly, the trial Court dismissed the complaint.

10. As against the same, the complainant has preferred the appeal in Crl.A.No.92 of 2018. The lower appellate Court has accepted the findings of the trial Court and confirmed the order of acquittal at para No.10 of the judgment, however, proceeded to take into consideration Ex.P7 and held that the averments made in Ex.P7-reply notice given by the revision petitioner-accused, amounts to admission and ordered payment of Rs.2,66,720/- as a compensation under the proviso to Section 357 (3) of Criminal Procedure Code and hence, this portion of the judgment is under challenge in this revision.

11. At the outset, I do not find any legality in the order passed in the Criminal Appeal by the lower appellate Court for the following reasons.

(i) The Ex.P3 (cheque) was drawn in favour of Sarjanraj. The said Sarjanraj has given the cheque to Ravikumar to maintain the complaint



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under Ex.P1 authorisation letter. Whether the private complaint in the name of PW1 alone as complainant is maintainable under the authorisation letter is yet another point.

(ii) The said Ravikumar is the Manager and Sarjanraj is running the Vijaya Shree Jewellers and he was not examined as PW1. In other words, the men who alleged to have lent money and in whose favour Ex.P2 cheque was alleged to have issued has not entered the witness box. However, PW1 who is the authorised agent has entered the witness box. The said Sarjanraj was examined as DW1. The version of DW1 destroys the case of PW1, as rightly observed by the trial Court.

(iii) The complaint has been filed in an individual capacity of Ravikumar and not on behalf of Sarjanraj, also assumes significance as to the maintainability of the complaint, when Sarjanraj is admittedly drawee of the cheque.



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(iv) Furthermore in the instant case, the revision petitioner-accused has denied the signature in the cheque, denied the loan transaction, also denied that the name was not written by her in the cheque and amount also was not filled up by her in the cheque. Hence, she has totally denied the execution of the cheque in her evidence as DW2 and therefore, the trial Court has rightly appreciated the evidence in this case along with pleadings and come to the right conclusion that when the accused has denied everything, it is for the complainant to prove that there existed a loan transaction and he is a 'man of means' to pay a sum of Rs.4 Lakhs and the cheque was issued by her. Absolutely there is no evidence and has rightly concluded the case.

12. The lower appellate Court also confirmed the finding of the trial Court and also confirmed the order of acquittal, however, appears to have relied upon Ex.P7-reply notice wherein the revision petitioner-accused has



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stated that

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'I have not borrowed Rs.4 lakhs from your client. The actual amount to be paid is Rs.2,66,720/- as on 10.10.2006''

and interpreted that averments as admission and accordingly, granted compensation. This Court is unable to affix the seal of approval for the said finding.

13. It remains to be stated that whether the said amount is due under the loan transaction covering Ex.P2-Cheque dated 20.10.2007 was not at all considered by the lower appellate Court. That amount is already time barred.

14. Yet another point is that in the Ex.P7-reply notice, the revision petitioner-accused has categorically stated that it is for some other transaction, not with regard to the alleged cheque transaction and hence, such an expression made by revision petitioner-accused under Ex.P7-reply notice cannot be construed as an admission and thus, the lower appellate



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Court has committed an error in not properly interpreting the evidence and accordingly, the said finding at paragraph Nos.11, 12 and 13 have to be vacated.

15. Hence, I have no hesitation to hold that the compensation awarded by the lower appellate Court under the pretext of admission under Ex.P7-reply notice, is totally unsustainable in law and the same is hereby set aside. Consequently, the judgment of the learned Additional District Judge (FTC), Vellore in Crl.A.No.92 of 2019 dated 05.03.2019 is set aside. The judgment of acquittal dated 11.04.2011 passed by the learned Judicial Magistrate (FTC), Vellore, Vellore District in C.C.No.461 of 2011, is restored. The Criminal Revision case is allowed. The bail bond executed shall stand cancelled. Consequently, the connected Criminal Miscellaneous Petition is closed.

10.08.2023

Index: Yes / No
Speaking/Non-Speaking order
Neutral Citation: Yes/No.
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To

1. The Additional District Judge (FTC),
Vellore, Vellore District.
2. The Judicial Magistrate (FTC),
Vellore, Vellore District.
3. The Public Prosecutor,
High Court, Madras.



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RMT. TEEKAA RAMAN, J.

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Pre-delivery Judgment made in
CRL.R.C.No.1097 of 2019

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