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Crl.R.C.No.137 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.03.2023

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.137 of 2020

&

Crl.M.P.Nos.952 and 954 of 2020

K.Ganesan

.. Petitioner

/versus/

1.The State rep by
Public Prosecutor,
Coimbatore.

2.P.Venkatachalapathy

.. Respondent

Prayer : Criminal Revision Case has been filed under Section 397 and 401 of Cr.P.C., to set aside the conviction imposed in the judgment dated 12.04.2019 made in C.A.No.77 of 2018 on the file of the learned I Additional District and Sessions Court, Coimbatore modifying the judgment dated 01.02.2018 made in C.C.C.no.148 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court Level-II, Coimbatore by allowing this Criminal Revision Petition.

For Petitioner :Mr.K.Sudhakar

For Respondents : Mr.R.Kishore Kumar
Government Advocate(crl.side) for R1



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ORDER

This Criminal Revision Case is directed against the judgment of conviction passed by the learned Judicial Magistrate, Fast Track Court Level-II, Coimbatore and confirmed by the learned I Additional District and Sessions Court, Coimbatore. As far as the sentence is concerned, the trial Court imposed one year SI and compensation of Rs.1,20,000/- with interest at the rate of 6% payable to the complainant. The lower appellate Court modified the sentence from one year SI to three months SI and confirmed the order of compensation passed by the trial Court. Aggrieved by that, the present Criminal Revision Case has been filed.

2. The brief facts of the case leading to the revision petition is that, the revision petitioner/accused for his urgent family needs and business purpose, received a loan of Rs.1,20,000/- from the respondent/complainant during the month of December 2013. He executed a pro-note on 09.12.2013 promising to repay the same within a year. Before expiry of the one year period, the accused gave two cheques each for Rs.60,000/-, dated 10.12.2014 and 21.12.2014 respectively bearing Nos. 152588 and 152589 drawn on Canara Bank,



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Kannampalayam Branch. When those cheques were presented for collection through the complainant's bank viz., City Union Bank, Villankurichi Branch, the same were returned with a memo "funds insufficient". Hence, after causing statutory notice dated 06.02.2015 calling upon the accused to pay the amount, the private complaint has been filed. The trial Court has taken cognizance of the complaint in C.C.No.148 of 2016.

3. To prove the complaint, the complainant himself was examined as PW-1 and he has marked 6 exhibits. The accused has not chosen to let in any evidence. In fact, the trial Court has recorded that even after affording opportunity, the accused has not even cross examined the complainant in full. No defence was put forth by the accused to rebut the presumption by preponderance of probability except denied the incriminating evidence put forth to him under Section 313 of Cr.P.C. Therefore, the trial Court held that the accused/revision petitioner guilty of offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him as stated above.



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4. On appeal, the lower appellate Court in Crl.A.No. 77 of 2018 vide order dated 12.04.2019 re-appreciating the evidence and the grounds of appeal that, he was not given adequate opportunity to cross examine the complainant and further, the order directing to pay compensation with 6% interest is beyond the power vested with the Judicial Magistrate under the Negotiable Instruments Act,1881. The lower appellate Court, after examining the records held that, the trial Court has given adequate opportunity on either side to let in evidence, but the accused right from the inception availed the opportunity. Though statutory notice was received by the accused, he has not chosen to reply the same. In spite of adjournments affording opportunity to cross examine PW-1, he partly cross examined the witness and subsequently, did not cross examine the witness, though the witness was present. For that reason, confirmed the conviction, however, modified the period of imprisonment from one year SI to 3 months SI, but had not interfered with the order regarding payment of compensation with interest at the rate of 6%.

5. The present revision case is filed on the ground that even if the



complainant has not been fully cross examined, Exs.P1 to P6 relied on by the complainant, does not prove the fundamental fact to draw the presumption under Section 139 of the Negotiable Instrument Act, 1881. The complainant though claims that the accused has executed the pronote, while borrowing the money, but took back the pronote after giving the cheque is highly improbable and no money lender will return the pronote without ascertaining the realisation of the cheque amount. Further, the learned counsel also contended that the statutory notice (Ex.P5) was not served on the accused and the same was returned 'unserved'. Therefore, it cannot be construed as deemed service. Cause of action under Section 138 of NI Act will arise only on issuance of the statutory notice within 30 days from the date of receipt of intimation from the bank and if the drawer of the cheque fails to pay the cheque amount, within 15 days from the date of receipt of the notice. Whereas, in this case, having not proved the due service of notice, the trial Court ought not have taken cognizance under Section 138 of the Negotiable Instruments Act, 1881 and more so, ought not to have taken presumption under Section 139 of the Negotiable Instruments Act, 1881.



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6. This Court, on perusing the exhibits, particularly, Ex.P5 and Ex.P6 finds that, the statutory notice is dated 06.02.2015 (Ex.P5). This has been issued by the complainant, after return of the cheque on 24.01.2015. In fact, this was the second presentation of the cheque and as per the complaint, when the cheque was presented earlier and returned with an endorsement “fund insufficient”, the accused pleaded that he was not able to honour the cheque due to ill-health and assured that the cheque will be honoured after one month. Accordingly, the complainant has represented the cheque on 24.01.2015. However, the same got returned on 24.01.2015. The returned postal acknowledgement, which is marked as Ex.P6 indicates that the postal authorities have left the intimation to the addressee. However, he has not collected from the post office. Hence, it has been returned.

7. It is not the case of the accused that the statutory notice was not sent to his address or not to sent him at all. His fault not collecting the notice inspite of intimation left by the postal authorities. He cannot take advantage of his own fault and therefore, this Court finds no illegal or perversity in the order passed by the Courts below. So far as the sentence



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has been modified by the lower appellate Court from one year SI to 3 month SI. However, regarding the compensation, the trial Court has awarded Rs.1,20,000/- being the cheque amount with 6% interest payable from the date of cheque. It is not the civil suit where the drawer of the cheque is liable to pay the cheque amount with interest. As per the statute, the compensation can be awarded upto twice the cheque amount and it is the discretion of the Court. But the twice the cheque amount cannot be by way of interest, even if it comes below twice the cheque amount. In other words, even if 6% interest for Rs.1,20,000/- is less than Rs.1,20,000/-, it will not fall within the definition of twice the cheque amount as contemplated under Section 138 of the Negotiable Instruments Act, 1881. Therefore, this Court finds that there is an error in imposing interest for the cheque amount. Pointing out the said error, the revision petition is disposed of by confirming the conviction and sentence of three months SI with compensation of Rs.1,20,000/- payable to the respondent/complainant.

8. Learned counsel appearing for the petitioner states that the appeal



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was filed with a delay and the condone delay petition was taken up for consideration, this Court finds in compliance with the conditional order, a sum of Rs. 49,000/- was paid to the complainant by way of Demand Draft. If it is so, the revision petitioner is liable to pay the balance amount, within a period of three weeks, from the date of receipt of a copy of this order, in default to pay the compensation, one month SI.

9. With the above direction, this Criminal Revision Case is disposed of. Consequently, connected Miscellaneous Petitions are closed.

08.03.2023

Index:yes/no
Speaking order/non speaking order
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To:

- 1.I Additional District and Sessions Court, Coimbatore.
- 2.The Judicial Magistrate, Fast Track Court Level-II, Coimbatore
- 3.The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN, J.



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