



Crl RC .No.1477 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl RC No.1477 of 2017

C.Ramanathan

..Petitioner /Appellant /Accused

Vs.

Pandithurai

..Respondent /Respondent/Complainant

Prayer: Criminal Revision case is filed under Section 397 (1) r/w 401 of Cr.PC against the judgement made in C.A.No.15 of 2015 dated 21.06.2017 on the file of Additional District Cum Sessions Judge, Mahila Fast Track Court, Tiruvarur, confirming the conviction and sentence passed in Judgement dated 27.02.2015 in STC No.66/2013 on the file of Judicial Magistrate (Fast Track Court), Thiruthuraipoondi.

For Petitioner : Mr.K.Sukumaran

For Respondent : M/s.R.Muruga Bharathi

Mr. M.Senthil Kumar



Crl RC .No.1477 of 2017

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ORDER

This Criminal Revision case has been filed against the judgement and order passed by the Additional District and Sessions Judge, Mahila Fast Track Court, Tiruvarur, in Crl A No.15 of 2015, dated 21.06.2017, confirming the judgement and order passed by the learned Judicial Magistrate (Fast Track Court), Thiruthuraipoondi in STC No.66 of 2013 dated 27.02.2015, convicting the petitioner for offence under Section 138 of the Negotiable Instruments Act and sentencing him to undergo one year simple imprisonment and to pay compensation of a sum of Rs.4,50,000/- under Section 357 (3) of Cr.PC to the respondent / complainant within a period of two months.

2. The respondent /complainant filed the criminal complaint on the ground that the petitioner / accused borrowed a



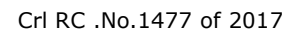
Crl RC .No.1477 of 2017

WEB COPY

sum of Rs.4,50,000/- as hand loan to meet his urgent expenses.

Towards this debt, the petitioner issued a post dated cheque dated 26.06.2013. When this cheque was presented for collection by the respondent with his bank, the same was returned with an endorsement “funds insufficient”. The same was informed to the respondent through memo dated 05.07.2013.

3. The respondent issued a legal notice dated 09.07.2013, calling upon the petitioner to pay the cheque amount within the statutory period. On receipt of this notice, the petitioner issued a reply notice dated 20.07.2013, informing the respondent that the petitioner never had any transaction with the respondent and that he does not know the respondent and that the cheque belonging to the petitioner were lost and out of those cheques, one cheque has been misused by the respondent. It was further stated in the reply that the petitioner had also given a police complaint in this regard



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6. The Trial Court on considering the facts and



Crl RC .No.1477 of 2017

WEB COPY

circumstances of the case and on appreciation of the oral and documentary evidence came to a conclusion that legal presumption under Section 139 of the Negotiable Instruments Act must lean in favour of the respondent and that the petitioner had failed to rebut the presumption and as a result, the Trial Court went ahead and convicted and sentenced the petitioner for offence under Section 138 of the Negotiable Instruments Act.

7. The petitioner aggrieved by the judgement of the Trial Court, filed an appeal and the same was heard by the Additional District Cum Sessions Judge in Crl A No.15 of 2015. The Appellate Court on re-appreciation of the evidence and after considering the findings of the Trial Court, came to a conclusion that there are no grounds to interfere with the judgement of the Trial Court and accordingly, the same was confirmed and the appeal was dismissed by judgement dated 21.06.2017. Aggrieved by the same, this



Crl RC .No.1477 of 2017

criminal revision case has been filed before this Court.

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8. Heard Mr.K.Sukumaran, learned counsel for the petitioner and MR.R.Muruga Bharathi, learned counsel for respondent.

9. The learned counsel for the petitioner mainly raised three grounds for the consideration of this Court. The first ground was that the respondent / complainant nowhere stated as to how he knows the petitioner and in what capacity, the petitioner had borrowed the money from the respondent. The 2nd ground that was submitted by the learned counsel for the petitioner is that no money was borrowed by the petitioner and there was no legally enforceable debt in this case. Hence, there is no question of applying the legal presumption in favour of the respondent in the absence of a legally enforceable debt. It was further contended



Crl RC .No.1477 of 2017

that the petitioner had taken the defence that the lost cheque has been misused by the respondent and the defence of the petitioner has been established through the test of preponderance of probabilities and that both the Courts below failed to appreciate the same and went wrong in convicting and sentencing the petitioner for offence under Section 138 of the Negotiable Instruments Act.

10. The learned counsel for the petitioner in order to substantiate his submissions, relied upon the following judgements :-

- (a) [M.S.Naryana Menon Alias Mani Vs. State of Kerala and Another] reported in 2006 6 SCC 39.
- (b) [Kumar Exports Vs.Sharma Carpets] reported in 2009 2 SCC 513



Crl RC .No.1477 of 2017

WEB COPY

(c) [Raj Kumar Khurana Vs. State of NCL of Delhi and another] reported in 2009 6 SCC 72.

(d) [Rangappa Vs. Sri Mohan] reported in 2010 11 SCC 441

(e) [Reverend Mother Marykutty Vs. Reni C.Kottaram and another] reported in 2013 1 SCC 327

(f) [Vijay Vs. Laxman and another] reported in 2013 3 SCC 86.

11. The learned counsel for respondent submitted that the findings of both the Courts below was based on appreciation of evidence and those findings do not suffer from any perversity. The learned counsel therefore submitted that this Court cannot re-appreciate the evidence and in the absence of any perversity in the findings, there is no scope to exercise the revisional jurisdiction



Crl RC .No.1477 of 2017

WEB COPY

and interfere with the judgment passed by both the Courts below.

The learned counsel submitted that there are absolutely no grounds to interfere with the judgment and order passed by both the Courts below and hence, sought for the dismissal of this Criminal Revision case.

12. This Court has carefully considered the submissions made on either side and the materials available on record.

13. One of the main ground that was taken by the petitioner was that he had lost 22 cheques issued by the Indian Bank and out of the same, one cheque has been misused by the respondent and the complaint has been filed against the petitioner. Both the Courts below while considering this issue, has taken into consideration the fact that it is unnatural and improbable that the petitioner would have signed 22 cheques and kept it with him. That apart, both the



Crl RC .No.1477 of 2017

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Courts below also took into consideration the fact that there was absolutely no clarity on the side of the petitioner as to when these cheques were lost and which of the wives had lost these cheques since the petitioner had more than one wife. According to the petitioner, the cheques were given to his wife and it was lost. If that is the case, the petitioner should have taken steps to atleast bring his wife to the picture and explain through her as to when these cheques were given and when it was lost. That apart, both the Courts below also took into consideration the fact the petitioner was claiming that the cheques had been lost on 09.06.2012. But however in the newspaper advertisement which was marked as Ex.D3, it is stated that the cheques were lost on 12.06.2012. There is absolutely no explanation on the side of the petitioner as to why there is such a discrepancy. The Courts below also took into consideration the fact that the petitioner had given instructions to the bank to stop payment on 09.06.2012 and



Crl RC .No.1477 of 2017

whereas, according to the paper advertisement, the cheques went missing on 12.06.2012. On all these grounds, both the Courts below found it difficult to accept the defence taken by the petitioner.

14. There was no dispute with regard to the fact that the signature that was found in the subject cheque was that of the petitioner. Once that is proved, the presumption under Section 139 of the Negotiable Instruments Acts starts operating. For rebutting this presumption, it is enough if the test of preponderance of probabilities is applied. The main ground that was taken by the petitioner to rebut this presumption is that the cheques were lost and one such cheque was misused by the respondent. While considering this defence, both the Courts found that the defence taken by the petitioner was unnatural and improbable and there was contradiction even as per the documents marked by the petitioner as to when those cheques went missing. It is only for this



Crl RC .No.1477 of 2017

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reason, both the Courts came to a categoric conclusion that the petitioner has not rebutted the legal presumption.

15. In the considered view of this Court, it is for the petitioner to establish that the cheque was lost and it was misused by the respondent. The Court below on appreciation of the evidence, found that the petitioner failed to establish the same. Once the petitioner has taken a very specific defence and the same is not established, the legal presumption under Section 139 of the Negotiable Instruments Act will start operating. The defence taken by the petitioner as if he does not know the respondent and that the respondent did not explain the nature of transaction that took place between the parties, pales into insignificance, since the petitioner was not able to establish that the lost cheque was misused by the respondent / complainant. This is more particularly in view of the fact that there was no dispute with regard to the



Crl RC .No.1477 of 2017

WEB COPY

signature that was found in the cheque. Once the signature in the cheque has been admitted, there is a legal presumption that the cheque was issued by the petitioner for a legally enforceable debt. Therefore, the respondent not explaining about how he knew the petitioner and under what circumstances the cheque was given, does not actually take away the legal presumption in favour of the respondent. In fact, the respondent had stated that the petitioner had issued a cheque after taking a hand loan from the respondent. This is the nature of transaction that took place between the petitioner and the respondent.

16. This Court in exercise of its revisional jurisdiction cannot re-appreciate the evidence. This Court is vested with a very limited jurisdiction and this Court can only see if the findings of both the Courts below suffer from perversity. On carefully going through the findings rendered by both the Court below, this Court



Crl RC .No.1477 of 2017

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finds that such findings were rendered on appreciation on evidence and by assigning proper reasons and hence, those findings cannot be interfered by this Court in exercise of its revisional jurisdiction.

17. In the light of the above discussion, the conviction and sentence imposed against the petitioner by the Trial Court and as confirmed by the Appellate Court, is hereby confirmed and this Criminal Revision case stands dismissed. The petitioner was enlarged on bail during the pendency of this Criminal Revision case by an order dated 21.11.2017 made in Crl MP No.14667 of 2017. Since this Criminal revision case stands dismissed, the petitioner is directed to surrender before the Trial Court within a period of 15 days from today and the Trial Court shall ensure that the petitioner undergoes the sentence imposed against him. In the absence of the petitioner surrendering within the time limit prescribed by this Court, the Trial Court shall take steps to secure the petitioner and



Crl RC .No.1477 of 2017

to make him undergo the sentence imposed against him. No costs.

WEB COPY

14.03.2023

Internet : Yes

Index : Yes

Speaking Order / Non Speaking Order

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Crl RC .No.1477 of 2017

N. ANAND VENKATESH, J.

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To

1. The Additional District Cum Sessions Judge, Mahila Fast Track Court, Tiruvarur,
2. The Judicial Magistrate (Fast Track Court), Thiruthuraipoondi.

Crl RC No.1477 of 2017

14.03.2023