



Crl.R.C.No.1574 of 2023
and Crl.M.P.Nos.14529 & 14530 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.R.C.No.1574 of 2023

and

Crl.M.P.Nos.14529 & 14530 of 2023

D.Ebenezer Daniel Raj

... Petitioner

Vs.

B.Dinesh Kumar

... Respondent

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the judgment dated 20.07.2023 in C.A.No.101/2020 passed by the learned IV Additional District and Sessions Judge, Coimbatore.

For Petitioner : Mr.P.Narayana Prasadh

ORDER

Challenge in this revision is made to the judgement and orders dated 20.07.2023 passed by the learned IV Additional District and Sessions Judge, Coimbatore in C.A.No.101/2020 in and by which the conviction and sentence dated 01.02.2020, passed by the learned Judicial Magistrate, Fast Track Court No.1 at Magisterial Level, Coimbatore in



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WEB COPY C.C.No.207/2015, was confirmed.

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

2.1. The complainant and the accused are known to each other.

The accused borrowed a sum of Rs.3,50,000/- from the complainant on 16.08.2012 to meet his urgent family needs and for developing his business. The revision petitioner/accused assured that he would repay the same with interest @ 18% per annum on demand.

2.2. When the complainant demanded the accused to repay the amount, the petitioner/accused issued a cheque bearing No.120407 dated 21.08.2014 (Ex.P1) drawn on Axis Bank, R.S.Puram Branch, Coimbatore, for a sum of Rs.4,04,237/- in favour of the respondent/complainant to discharge his liability. When the complainant presented the said cheque for collection on 21.08.2014 through his banker, viz., the Canara Bank, Gandhipuram Branch, Coimbatore, the cheque was returned unpaid for the reason 'Account Closed' as is seen from the cheque Return Memo dated 23.08.2014 (Ex.P2). Therefore, the



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respondent/complainant issued a legal notice dated 20.09.2014 (Ex.P3) to the accused. Though the revision petitioner/accused received the said legal notice on 22.09.2014 as is seen from the postal acknowledgement card (Ex.P4), he did not come forward to pay the amount due under the cheque and did not also send any reply to the notice received by him.

2.3. Therefore, the respondent/complainant filed a private complaint before the learned Judicial Magistrate, Fast Track Court No.1 at Magisterial Level, Coimbatore, under Section 200 Cr.P.C. against the revision petitioner/accused for an offence punishable under Section 138 of the Negotiable Instruments Act in C.C.No.207/2015. The learned Judicial Magistrate, Fast Track Court No.1 at Magisterial Level, after receipt of the complaint recorded the sworn statement of the complainant and took cognizance of the offence under Section 138 of the Negotiable Instruments Act (herein after referred to as NI Act) and issued summons to the accused. On appearance of the accused, the copies of the case records were furnished to him under Section 207 Cr.P.C. When the accused was questioned with regard to substance of accusation made



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against him, he pleaded not guilty and therefore, the case was posted for trial.

3.The complainant examined himself and marked Ex.P1 to Ex.P4. When the accused was questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, the accused denied of having committed any offence. However, the accused did not adduce any oral / documentary evidence on his side.

4.After analysing the evidence on record, the learned trial court judge found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act, convicted and sentenced him as detailed hereunder.

<i>S.No.</i>	<i>Offences under which convicted</i>	<i>Sentence</i>
1	Section 138 of N.I. Act	Simple imprisonment for six months and to pay a sum of Rs.4,04,237/- as compensation to the complainant u/s.357(3) Cr.P.C., within two months



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S.No.	<i>Offences under which convicted</i>	<i>Sentence</i>
		from the date of the judgment, in default, to undergo simple imprisonment for two months.

5. Aggrieved over the same, the revision petitioner/accused filed an appeal in C.A.No.101/2020 before the IV Additional District and Sessions Court, Coimbatore. The learned IV Additional District and Sessions Judge, Coimbatore after analysing the evidence on record, confirmed the findings recorded by the trial court judge and dismissed the appeal, as against which the present criminal revision is filed.

6. Mr.P.Narayana Prasadh, learned counsel for the revision petitioner contended that the cheque was issued in favour of Hindu Undivided Family and therefore, the complainant Dinesh Kumar cannot file a complaint in his individual capacity. According to him, the complainant is only a Karta of Hindu Undivided Family.

7. The learned Judicial Magistrate, Fast Track Court No.1 at Magisterial Level, Coimbatore had considered this plea of the accused



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WEB CO and observed thus :

*"10.From the above and on perusal of record, it comes to know that the accused did not deny the borrowal of amount from the complainant. Further, the accused did not deny the issuance of the cheque for discharging the liability. The accused raised a single defence stating that the payee of the cheque is Dinesh Kumar - HUF, but the case was filed in the individual capacity i.e. by Dinesh Kumar only and therefore the complaint filed by the complainant is liable to be dismissed. It is an admitted fact that the payee of the cheque is Dinesh Kumar - HUF. Though the accused raised this defence, the complainant clearly deposed that he is the Karta of HUF and in order to prove the same, he can produce Pan Card. But the accused did not prove the same either by oral or documentary evidence. In **Labh Chand Jain Vs Satish Kumar Meena**, the Hon'ble High Court of Rajasthan held that the HUF is not come under the definition of S.141 of the NI Act. Further, the complaint can be maintained only by holder of the cheque in due course and not by a stranger. Hence this court comes to the conclusion that when the accused did not deny the borrowal of amount and issuance of the cheque, then the defence raised by the accused is not proving any contrary to the case of the complainant."*



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8. It is pertinent to point out that the accused did not deny the signature on the cheque and therefore, there is a presumption u/s.118 & 139 of the Negotiable Instruments Act unless the contrary is proved. The accused did not send any reply to the statutory notice issued by the complainant. The cheque in question was issued in the name of Dinesh Kumar – Hindu Undivided Family (HUF) and this alone cannot be a reason to hold that Dinesh Kumar cannot file a private complaint in his individual capacity. Moreover, the Hindu Undivided Family (HUF) does not come under the purview of Section 141 of N.I. Act. In the circumstances, I do not see any reason to interfere with the findings recorded by both the Courts below.

9.It is trite law that this Court while exercising its revisional jurisdiction cannot act as a second appellate court. A bare perusal of the concurrent findings of both the Courts below clearly shows that all the aspects of the case had been considered well. The accused had not rebutted the presumption under Section 139 of the Negotiable



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10. In the result, the Criminal Revision Case is dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

- i. The judgement dated 20.07.2023 passed in C.A.No.101/2020 on the file of the IV Additional District and Sessions Court, Coimbatore and the orders dated 01.02.2020 passed in C.C.No.207/2015 on the file of the Judicial Magistrate, Fast Track Court No.1 at Magistrate Level, Coimbatore, are confirmed.
- ii. The revision petitioner/accused shall surrender before the Judicial Magistrate, Fast Track Court No.1 at Magisterial Level, Coimbatore, within 15 days from the date of receipt of copy of this order, failing which, the Trial Court shall take steps to secure him for undergoing the sentence.

13.09.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
mtl

To

- 1.The IV Additional District and Sessions Court, Coimbatore.
- 2.The Judicial Magistrate, Fast Track Court No.1 at Magistrate Level,
Coimbatore

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