



Crl.R.C.No.1467 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.06.2023

PRONOUNCED ON : 15.06.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1467 of 2019

M.Ganesan

... Petitioner/Accused

Vs.

K.Pachiyammal

.. Respondent/Private Complainant

PRAYER: This Criminal Revision Case is filed under Section 397 read with Section 401 of Cr.P.C., to call for records and set aside the judgment passed in CA.No.137/2019 dated 22.11.2019 by the Additional District (Fast Track) Court, Mettur and the judgment passed in STC No.175 of 2016 dated 21.06.2019 by the learned Judicial Magistrate No.1, Mettur.

For Petitioner : Mr.V.Vijayakumar

For Respondent : No Appearance



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Crl.R.C.No.1467 of 2019

ORDER

Convicted accused is the revision petitioner herein.

2. The respondent-K.Pachiammal filed STC No.175 of 2016 against the revision petitioner/accused for the offence under Section 138 of the Negotiable Instruments Act. It is a private complaint.

3. During the trial, on the side of the complainant, the complainant examined herself as PW1 and Ex.P1 to Ex.P5 were marked through her. The cheque bearing No.826904 dated 29.01.2016 for Rs.2,00,000/- drawn on State Bank of India, Mettur Branch, has been marked as Ex.P1; Bank challan dated 29.01.2016, has been marked as Ex.P2; Cheque return memo dated 29.01.2019 has been marked as Ex.P3; Legal notice along with RPAD receipt dated 04.02.2016 has been marked as Ex.P4; and Postal Acknowledgement Card dated 06.02.2016 has been marked as Ex.P5. On behalf of the accused, no oral or documentary evidence, has been let in.



Crl.R.C.No.1467 of 2019

WEB COPY

4. The trial Court on consideration of the oral and documentary evidence found that the offence under Section 138 of Negotiable Instruments Act is attracted and accordingly, laid the conviction against the revision petitioner/accused and sentenced him to undergo simple imprisonment for one year and to pay the cheque amount of Rs.2,00,000/- as compensation to the private complainant within a period of two months from 21.06.2019, failing which, he has to undergo default sentence of simple imprisonment for three months. The appellate Court also confirmed the same and hence, the revision.

5. The learned counsel for the revision petitioner/accused could contend that the trial Court has erred in invoking the statutory presumption under Section 139 of the Negotiable Instruments Act and the private complainant has no sufficient means to lend a sum of Rs.2,00,000/- and also stated that she has not produced any document for pledging of jewels for lending the loan.



Crl.R.C.No.1467 of 2019

WEB COPY

6. No representation on behalf of the learned counsel for the respondent/private complainant.

7. After perusing the evidence of PW1, which is extracted by the trial Court at paragraph Nos.17, 18, 19, 20 and 21, the trial Court has rightly come to the conclusion that the private complainant is an illiterate lady and she does not know to write and the accused is an educated officer working in Tamil Nadu Electricity Board. The cheque in issue i.e. Ex.P1 admittedly belongs to the accused herein. For Ex.P4-legal notice, which was served upon the revision petitioner/accused on 06.02.2016 vide Ex.P5-RPAD Receipt, for the reasons best known, he has not issued any reply notice.

8. Be that as it may, during the cross examination, the revision petitioner/accused, disputed the signature. Once, the accused disputed the signature, in all reasonable probability he should have filed an application for comparing the signature in Ex.P1-Cheque with the admitted signature.



Crl.R.C.No.1467 of 2019

WEB COPY

However, for the reasons best known, he has not taken any steps either before the trial Court or before the appellate Court and hence, both the Courts have rightly observed that as the accused denied the signature, the burden is upon him to produce the admitted signature and seek for an expert opinion. Having failed to do so, they have drawn an adverse inference that disputing the signature is for the formal sake of denial.

9. In the instant case, Ex.P1 is admittedly the cheque of the revision petitioner/accused and as observed above, he is an educated officer working in Tamil Nadu Electricity Board. In the chief examination, PW1 has spoken about lending money to the revision petitioner/accused, filling of the cheque and that the revision petitioner/accused has presented the accused, Therefore, the duty is cast upon the shoulders of the revision petitioner/accused to establish as to how his personal cheque went to the hands of PW1 and has to assert or aver whether he misplaced the cheque or the cheque has been stolen by somebody and whether any police complaint



Crl.R.C.No.1467 of 2019

WEB COPY

has been given for missing of the cheque. Admittedly, no explanation is forthcoming from the revision petitioner/accused.

10. As stated supra, there is no reply notice by the revision petitioner/accused for Ex.P4-legal Notice issued by the respondent/private complainant and he has not let in any evidence nor elicited anything during the cross examination of PW1.

11. On the cumulative analysis of the above facts, both the Courts below have rightly come to the conclusion that the cheque belonging to the revision petitioner/accused has been handed over to the respondent/private complainant and on presentation of the same before the Bank, it has bounced for want of funds and as, the cheque was returned for 'insufficient funds', offence under Section 138 of the Negotiable Instruments Act, is attracted. Hence, this respondent/private complainant is entitled for presumption and accordingly, called upon the revision petitioner/accused to rebut the presumption. To my dismay, no steps have been taken by the



Crl.R.C.No.1467 of 2019

WEB COPY

petitioner accused to rebut the presumption and consequently, I find that in the absence of any material for rebutting the presumption and in view of the statutory presumption that arose in favour of the respondent/private complainant, both the Courts below have rendered a concurrent finding and convicted the revision petitioner/accused. Hence, I find that the order passed by both the Courts below does not suffer from any irregularity or illegality, warranting interference in this revision.

12. Accordingly, the judgment passed in CA.No.137/2019 dated 22.11.2019 by the Additional District (Fast Track) Court, Mettur and the sentence and conviction passed in STC No.175 of 2016 dated 21.06.2019 by the learned Judicial Magistrate No.1, Mettur, are hereby confirmed and the Criminal Revision Case stands dismissed.

13. As the revision petitioner/accused, is on bail, the trial Court shall take steps to secure the revision petitioner/accused, to commit him in prison to serve out the remaining period of sentence. The period of sentence



Crl.R.C.No.1467 of 2019

WEB COPY

already undergone by the revision petitioner/accused, shall be set off under
Section 428 of the Code of Criminal Procedure.

15.06.2023

Index : Yes/No
Speaking / Non-Speaking Order
Neutral Citation : Yes/No

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Crl.R.C.No.1467 of 2019

To

1. The Additional District (Fast Track) Court,
Mettur.
2. The Judicial Magistrate No.1,
Mettur.
3. The Public Prosecutor,
High Court, Madras.



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Crl.R.C.No.1467 of 2019

RMT.TEEKAA RAMAN,J.,

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Pre-delivery order in
Crl.R.C.No.1467 of 2019

15.06.2023