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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	01/12/2022
Date of Pronouncement	05/01/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.RC(MD)No.148 of 2021

T.N.Radhakrishnan : Revision Petitioner/
Respondent/Complainant

Vs.

Mrs.G.Nagarathinam : Respondent/Appellant/
Respondent

Prayer: Criminal Revision is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the judgment of acquittal passed in CA No.126 of 2018 dated 07/11/2020 by the IV Additional District an Sessions Judge, Madurai and to set aside the same and consequently, convict the respondent for the offence under section 138 of the Negotiable Instruments Act.

For Petitioner : Mr.Babu Rajendran

For Respondent : Mr.N.Pragalathan

O R D E R

This criminal revision has been filed seeking to set aside the impugned order passed by the appellate court.



2.The facts in brief:-

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On 30/05/2005, the accused person borrowed a sum of Rs.5,00,000/- promising to return the same within three months. Due to demand, he issued a cheque, dated 31/08/2015 drawn on Canara Bank, Madurai. When that was presented for payment, it was returned, on 06/09/2015 due to funds insufficient. Notice was issued to the accused, on 10/09/2015. That was replied by the accused, on 20/09/2015 stating that after expiry of 25 days, he sent a reply stating false allegation as if only cover was received and not notice. So the copy of the notice was also sent on 21/10/015.

3.With these allegations, he filed a complaint and that was resisted by the accused stating that he has not issued any cheque in favour of the complainant; The cheque was stolen by the complainant through his father-in-law and forged the signature. Apart from that, non-receipt of the statutory notice has also been raised.

4.At the time of the trial, the trial court found the accused guilty and accordingly, he was convicted and sentenced to undergo simple imprisonment for six months and to pay Rs.5,00,000/- as compensation.



5. Against which, the accused preferred appeal before the Additional District Judge, Madurai, in CA No.126 of 2018 and that was allowed on the ground that the signature of the accused was not properly proved, so also the transaction. Apart from that, it is also held that the statutory notice was not properly served upon the accused. So the appellate court reversed the conviction and sentence and accordingly, it acquitted the accused.

6. Against which, this criminal revision has been preferred by the complainant.

7. Heard both sides.

8. The learned counsel appearing for the petitioner would submit that the findings of the appellate court that the signature that was found in the disputed cheque is not similar to the admitted signature of the accused is not correct, since even as per the evidence of PW2, Bank Manager, the cheque was returned only due to the funds insufficient and not on the ground of difference of signature. More-over, it is also submitted that the respondent has not produced any document showing his admitted signature, which was contemporaneous in nature and the copy of the notice was also sent to the respondent, on 21/10/2015, even though, it has been stated by the



respondent that the cover did not contain any statutory notice. Now according to him, in the facts and circumstances of the case, there is no necessity to send the disputed cheque for expert verification.

9. Per contra, the learned counsel appearing for the respondent would submit that not only the signature is disputed and denied, but also as found by the appellate court it also differs, and the source of the petitioner has not been established.

10. Before we go into this aspect, let us take up the first issue as to whether proper statutory notice has been served upon the respondent. A reply letter was sent by the respondent stating that only cover is received and not the statutory notice. Even though, there is a delay on the part of the respondent, I find that there is no necessity for the respondent to make such sort of allegation. The contents of the letter also does not show any *mala fide* intention to suppress the truth.

11. For this, the learned counsel appearing for the petitioner would submit that the postal cover bears proper postal stamp, which stamped for weighing. According to him, the value of the stamp will show that it had the contents. But these things cannot be taken into account, when no



proper evidence is available.

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12. But from the facts, it is seen that by mistake, the petitioner would have sent the cover without statutory notice. I find no reason to doubt the genuine grievance, that has been expressed by the respondent herein. So even though, copy was sent along with the reply notice, on 21/10/2020, that will not cure the defect, that occurred. The petitioner ought to have presented the cheque for the second time and would have sent the notice within the time. But that was not done. On the basis of the statutory notice, the complaint has been filed, which in the considered view of this court, is not proper.

13. More-over, the source of the petitioner to lend money was not also properly established. According to him, he withdrew Rs.3,00,000/- from the his Bank account and paid the same to the respondent. But no corresponding Bank account has been produced.

14. Apart from that, the place of payment of money has also been doubted by the appellate court on the basis of the correction in the notice, complaint, affidavit, etc. So because of this doubt only, the appellate court has reversed the judgment of conviction.

15. It is not the case of admission of the signature



in the cheque. The very signature itself has been denied and disputed. So the petitioner ought to have taken steps, either to send the document for expert opinion or would have sent the admitted signature, which was contemporaneous nature to the Scientific expert for examination. But those steps have not been taken. So when the foundation case has not been established by the petitioner, I find no reason to differ from the view that has been taken by the trial court.

16. In the result, this criminal revision is **dismissed.**

05/01/2023

Index: Yes/No
Internet: Yes/No

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To,



1.The IV Additional District Judge,
Madurai.

2.The Judicial Magistrate No.II,
Madurai.



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G.ILANGOVAN, J

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Cr1.RC(MD)No.148 of 2021

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