



Crl.R.C(MD)No.27 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

**Crl.R.C(MD)No.27 of 2019
and
Crl.M.P(MD)No.1153 of 2019**

A.Varghese ... Petitioner/Respondent/
Respondent

Vs.

M.Devendran ... Respondent/Petitioner/
Appellant

PRAYER: Criminal Revision Case filed under Section 397(1) r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the impugned order dated 12.12.2018 passed in Cr.M.P.No.444 of 2017 in Crl.A.No.62 of 2016 on the file of the learned II Additional District and Sessions Judge, Thoothukudi, Thoothukudi District.

For Petitioner : Mr.N.Subramani

For Respondent : Mr.R.J.Karthick



Crl.R.C(MD)No.27 of 2019

ORDER

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This revision has been filed as against the order passed in Cr.M.P.No.444 of 2017 in Crl.A.No.62 of 2016, dated 12.12.2018, on the file of the learned II Additional District and Sessions Judge, Thoothukudi, Thoothukudi District, thereby allowed the petition filed under Section 391 of Cr.P.C to receive the additional document.

2.The petitioner is the complainant and the respondent is the accused. The petitioner lodged a complaint as against the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.

3.The crux of the complaint is that the respondent borrowed a sum of Rs.4,00,000/- during the year 2015 and in order to repay the said amount, the respondent issued a cheque for the said sum of Rs.4,00,000/-. The said cheque was presented for collection and the same was returned 'dishonoured' for the reason 'funds insufficient'. After causing statutory notice, the petitioner preferred the complaint as against the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.



Crl.R.C(MD)No.27 of 2019

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4. Before the trial Court, the petitioner himself was examined as P.W.1 and marked Ex.P.1 to P.13 and on the side of the respondent, no one was examined and marked Ex.D.1 to Ex.D.3.

5. On perusal of the oral and documentary evidence, the trial Court found the respondent guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year Simple Imprisonment and also directed him to pay a sum of Rs.4,00,000/- as compensation to the petitioner within a period of one month, in default, to undergo further for the period of one month Simple Imprisonment. Aggrieved by the same, the respondent preferred an appeal in Crl.A.No.62 of 2016 on the file of the learned II Additional District and Sessions Judge, Thoothukudi, Thoothukudi District. While pending the appeal, the respondent filed a petition under Section 391 of Cr.P.C in Cr.M.P.No.444 of 2017 in Crl.A.No.62 of 2016 on the file of the Appellate Court to receive the following additional documents:-



Crl.R.C(MD)No.27 of 2019

"(1) 03.08.2009 – sale deed document No.2928/2009, sale deed executed by the petitioner/accused. - SRO Copy.

(2) 03.08.2009 – sale deed document No.2926/2009, sale executed by the petitioner/accused. - SRO Copy.

(3) 29.05.2009 – sale deed document No.2066/2009, sale executed by the petitioner/accused. - SRO Copy.

(4) Sale receipt in respect of sale of vehicle.

(5) 20.05.2009 – settlement deed document No.1910/2009, executed by Mrs.Ambika in favour of the petitioner/accused.

(6) Encumbrance certificate 01.01.2000 to 13.12.2016 – Web Copy."

6.The said petition was filed in order to prove that the respondent repaid the loan amount, which was borrowed by him. On perusal of those documents revealed that all are sale deeds, settlement deed and encumbrance certificate in respect of the property owned by the respondent in the year 2009. According to the petitioner, the loan was borrowed by the respondent during April



Crl.R.C(MD)No.27 of 2019

2015 to the tune of Rs.4,00,000/-, whereas the documents which were intended to be purchased pertaining to the year 2009. That apart, those documents are not going to prove the amount, which is allegedly repaid by the respondent to the petitioner. Those documents are no way connected with the repayment of money by the respondent herein. Unfortunately, the Appellate Court, mechanically without considering the nature of the documents, allowed the petition. Therefore, it is liable to be interfered with.

7. Accordingly, this Criminal Revision Case is allowed and the order passed in Cr.M.P.No.444 of 2017 in Crl.A.No.62 of 2016, dated 12.12.2018, on the file of the learned II Additional District and Sessions Judge, Thoothukudi, Thoothukudi District, is set aside. The Appellate Court is directed to dispose of the appeal in Crl.A.No. 62 of 2016 within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

12.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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Crl.R.C(MD)No.27 of 2019

To

The II Additional District and Sessions Court,
Thoothukudi,
Thoothukudi District.



Crl.R.C(MD)No.27 of 2019

G.K.ILANTHIRAIYAN, J.

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Order made in
Crl.R.C(MD)No.27 of 2019

12.06.2023