



Crl.R.C(MD).No.424 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.R.C(MD).No.424 of 2019

Balusmay Thevar

...Petitioner

Vs

Sethilarasu

... Respondent

PRAYER: Criminal Revision Case is filed under under Section 397 and 401 Cr.P.C., to set aside the Judgment, dated 12.03.2019 in C.A.No.33 of 2018 passed by the Principal Sessions Court, Dindigul District,, confirming the Judgment, dated 16.04.2018 in C.C.No.11 of 2016 by the Judicial Magistrate No.II, Dindigul and acquit the accused / revision petitioner.

For Petitioner : Mr.J. Lawrence

For Respondent : Mr. Saravanaprabu



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ORDER

This Criminal Revision has been filed to set aside the Judgment, dated 12.03.2019 made in C.A.No.33 of 2018 passed by the Principal Sessions Court, Dindigul District, confirming the Judgment and conviction dated 16.04.2018 in C.C.No.11 of 2016 by the Judicial Magistrate No.II, Dindigul and acquit the accused / revision petitioner.

2. The facts of the case are that the respondent herein has filed a complaint under Section 138 of Negotiable Instruments Act as against this petitioner / accused stating that he borrowed a sum of Rs. 4,50,000/- on 04.04.2015 and thereafter, he has to pay a sum of Rs.55,000/- towards the purchase of cattle feeds and for that, he issued a cheque on 02.06.2015 in his favour. The cheque was filled with Rs.5,05,000/-, bearing Cheque No. 074856, dated 02.06.2015 drawn on Canara Bank, Dindigul and the same was presented for collection and that was returned with an endorsement as “insufficient funds” through a Memo, dated 03.06.2015. Thereafter, on 20.06.2015, the complainant issued a notice to the petitioner and the same was received by him on 23.06.2015. After receipt of the notice, he neither



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paid the amount nor issued any reply and thereby, the respondent has filed a complaint under Section 138 of Negotiable Instruments Act. Thereafter, the copies of records relied on by the complainant were furnished to the accused and also the subsequent change was explained to him and he denied. The trial Court has examined PW.1 and marked Exs.P1 to P6. On the side of the respondent, RW.1 to RW.3 were examined, but, no documents were marked. After completion of the complainant side evidence, the accused was examined under Section 313 Cr.P.C., with regard to incriminating circumstances and the same was denied by the accused. Thereafter, the trial Court has convicted the accused for the offence under Section 138 of Negotiable instruments Act and sentenced him to pay a sum of Rs.5,10,000/- within one month and in default to undergo two months Simple Imprisonment and further directed that out of the said fine amount of Rs.5,10,000/-, the complainant is to be paid Rs. 5,05,000/- as compensation u/s. 357 Cr.P.C.,

3. Aggrieved by the said Judgment, the accused has filed appeal in Crl.A.No.33 of 2018 on the file of the Principal Sessions Court, Dindigul District and the same was also dismissed by confirming the Judgment of



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the trial Court. Aggrieved against the same, the petitioner herein has filed this revision on the following grounds:

(i) The Judgments of the Courts below are contrary to law and committed grave error in convicting the petitioner/accused for the above said alleged offence;

(ii) The Courts below convicted the accused without any proper evidence;

(iii) The Courts below have failed to consider the witnesses examined on behalf of the accused and failed to consider that the cheques issued in favour of the defacto complainant for construction work;

(iv) There is no evidence adduced by the complainant to prove with regard to the purchase of cattle feeds;

(v) The trial Court failed to consider the evidence of Manager of Canara Bank and the huge amount was deposited in the account of accused and the complainant also admitted the financial capacity and no need to borrowal of money from the complainant.

4. The learned counsel appearing for the petitioner contended that the



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complainant has filed the case against the petitioner alleging that he borrowed money and also purchased cattle feeds for that has issued a cheque on 02.06.2015 for a sum of Rs.5,05,000/- as per amended Section 140 of Negotiable Instruments Act. But, the petitioner has not borrowed any amount from the complainant and the petitioner was doing construction work and he used to give cheques to the complainant for the purchase of materials and the same was misused by the complainant and petitioner had no need to borrow money from the complainant and the complainant has not proved the case . Per contra, the petitioner examined DW.1 to DW.3 before the trial Court and thereby, rebutted presumption under Section 139 of Negotiable Instruments Act, but, the trial Court has failed to consider the same. Further, the trial Court has no jurisdiction to award compensation of Rs.5,10,000/- and therefore, the Judgments passed by the Courts below are liable to be set aside by allowing this revision.

5. The learned counsel appearing for the respondent contended that as per Section 141 of Negotiable Instruments Act, the Magistrate has power to impose more than Rs.5,000/- as per amended Section 140 of Negotiable Instruments Act and this principle was already settled by the



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Hon'ble Supreme Court. PW.1 has deposed about the issuance of cheque and the borrowal of money by the accused and he also marked the documents as Exs.P1 to P6 and accused also not denied the signature found in the cheque and thereby, the presumption is in favour of the complainant and in order to rebut the presumption under Section 139 of Negotiable Instruments Act, the accused failed to prove the contrary. Though he examined DW1 to DW.3 those evidences are not sufficient to prove the case of the accused and thereby, the trial Court has rightly dismissed the petition. Therefore, the defacto complainant has proved the case and hence, this Criminal Revision Case is liable to be dismissed.

6. Heard both sides and perused the records. Upon hearing both sides, perusing the records, Judgments of the Courts below and grounds, the point for consideration in this revision is as follows:

7. Whether the Judgment, dated 12.03.2019 in C.A.No.33 of 2018 passed by the Principal Sessions Court, Dindigul District, confirming the Judgment, dated 16.04.2018 in C.C.No.11 of 2016 by the Judicial Magistrate No.II, Dindigul, are sustainable in law and on facts?



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8. The case of the complainant is that the accused borrowed a sum of Rs.4,50,000/- from the defacto complainant on 04.04.2015 and thereafter, there was a due for a sum of Rs.55,000/- for purchase of cattle feeds. To settle the said amount the accused issued a cheque on 02.06.2015 for a sum of Rs.5,05,000/- and when it was presented for collection, it was returned as insufficient funds on 03.06.2015. Thereafter, the complainant sent a notice on 20.06.2015 and the same was received by the accused, but, no reply was sent by him and thereby, filed this complaint. In order to prove the case of complainant he examined PW.1 and marked Exs.P1 to P6. On the side of the accused he examined DW.1 to DW3 and no documents were marked. PW.1 has deposed about the issue of cheque for borrowal of amount and the accused had also not denied the signature found in the cheque and thereby, the accused has to rebut the presumption under Section 139 of Negotiable Instruments Act. On the side of the accused, DW.1 to DW.3 were examined. DW.1 - Manager of the Canara Bank deposed about the balance maintained by the accused and according to the evidence, Rs.6,00,000/- was deposited by the accused in the Canara Bank on 29.05.2013. As per the evidence of RW.2, the accused / petitioner



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herein was engaged in the construction work and for which, the accused used to entrust the cheque book with the signature for the purchase of materials and he also deposed that the above said cheque was filed for the said purpose. DW.3 in his evidence also stated that the accused gave a cheque to the complainant for construction of Marriage Hall. On careful perusal of the said evidences they revealed that the accused used to give cheques to the complainant for purchase of building materials. But, there is no evidence that when the cheques were given to complainant and how many cheques were given to him. The evidence of DW.1 shows that the accused had deposits in the bank, but mere proof of having bank deposits are not sufficient to prove the case of the accused. Once the accused admitted the signature found in the cheque he has to rebut the presumption under Section 139 of NI Act, but the available evidence is not sufficient to prove the defence of the accused. After considering all the evidence, the trial Court and the Appellate Court came to the conclusion that the complainant has proved the case against the accused and thereby, the trial court has convicted the accused for the offence under Section 138 of Negotiable Instruments Act. The grounds raised by the petitioner / accused have no merits. Once the accused admitted the signature found in the



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cheque it is his duty to prove his case but the available evidence are not sufficient to prove his contention and thereby, the trial Court has rightly convicted the accused and the appellate Court has also elaborately discussed about the evidence adduced by both sides and dismissed the appeal filed by the accused.

9. The learned counsel appearing for the petitioner has argued that the Judicial Magistrate has no power to award a fine of Rs.5,10,000/-. As per Section 29(2) of Cr.P.C., the Magistrate can impose a fine of Rs. 10,000/- . Per contra, the learned counsel appearing for the respondent argued that the Negotiable Instruments Act is Special Act and the Special Act will prevail over the general Act. As per the amended Section 140 of the Act the Magistrate can impose fine more than Rs.5,000/-. In support of his contention, the learned counsel appearing for the respondent relied on the Judgment reported in **2007(BC) 377, 2006 Cri.LJ 1554, 2006(3) KarLJ649 in the case of (Mrs. Shaila P.Prabhu Vs. Nagendra K. Mallya and Anr.)** and the Judgment of the Hon'ble Supreme Court made in **Crl. Appeal.No.1902 of 2011 (R.Vijayan Vs. Baby and Anr)**. On careful perusal of the above Judgments, it is made clear that after amending



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Section 140 Negotiable Instruments Act, the Magistrate can impose fine more than Rs.5,000/- under Section 140 of Negotiable Instruments Act.

10. In view of the above said Judgments and as discussed above, the contention of the learned counsel for the petitioner, that the Magistrate has no power to award fine for more than Rs.10,000/- as per Section 29 (2) Cr.P.C., is not acceptable.

11. Therefore, the trial Court as well as the appellate Court correctly applied the law and discussed the facts and passed the reasoned Judgment and hence, there is no infirmity in the above Judgments passed by the trial Court as well as the Appellate Court. Therefore, this Criminal Revision Case has no merits and deserves to be dismissed and accordingly, this Criminal Revision Case is dismissed.

26.09.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
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To

1. The Principal Sessions Court, Dindigul District
2. The Judicial Magistrate No.II, Dindigul and



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P. DHANABAL,J.

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