



Crl.R.C.(MD) No.44 of 2019

IN THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 22.09.2023

PRONOUNCED ON : 17.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl. R.C. (MD) No.44 of 2019

A. Leninton S/o. M. Antony Xavier

... Petitioner /Complainant

Vs.

M. Dinakaran S/o. Willsam Miller

... Respondent / Accused.

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Criminal Procedure Code, praying to call for the records pertaining to the case in C.A. No.45 of 2018 dated 20.09.2018 on the file of the learned Principal District Judge, Thoothukudi preferred as against the judgment and acquittal passed in C.C. No.332 of 2012 by the learned Judicial Magistrate, Fast Track Court, Thoothukudi and set aside the same.

For Petitioner : Mr. K.A. Ramakrishnan

For Respondent : R. Balakrishnan



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ORDER

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This Criminal Revision in Crl. R.C. (MD) No.44 of 2019 has been preferred by the petitioner as against the Judgment passed in C.A. No.45 of 2018 by the learned Principal District Judge, Thoothukudi dated 20.09.2018 wherein the Appellate Court has dismissed the appeal for non-prosecution.

2. In the Trial Court, the petitioner herein, had filed a cheque complaint under Section 138 of Negotiable Instruments Act as against the respondent herein. The Trial Court has acquitted the respondent / accused through its judgment dated 18.11.2016. As against the said judgment, the complainant has filed a Criminal Appeal before the learned Principal District Judge, Thoothukudi in Crl. A. No.45 of 2018. The Appellate Court has dismissed the said appeal for default due to non-payment of Batta. As against the said judgment, this Criminal Revision Petition has been filed by the petitioner/complaint.

3. For the sake of convenience, the revision petitioner and the respondent will be referred to as the complainant and the accused respectively.



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3.1. A vignette of the case of the complainant is as under:

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3.2. The complainant and the accused were well known to each other.

Based on that relationship, the accused approached the complainant for obtaining loan of Rs.3 lakhs. Accordingly, the complainant also agreed to pay the loan amount to the accused. On 10.08.2009, the accused borrowed a sum of Rs.3 lakhs from the complainant and agreed to repay the loan amount with 1% interest. For the above said loan, the accused had executed a Promissory Note [Ex.P.6] in favour of the complainant and as per the terms of the Promissory Note, the accused regularly paid the interest but he had not repaid the principal amount. In spite of repeated requests and demands made by the complainant, the accused failed to repay the said loan amount.

3.3. Thereafter, the accused issued the disputed Cheque dated 25.02.2010 to discharge the above said loan for a sum of Rs.3 lakhs, drawn on South Indian Bank, Thoothukudi Branch. When the said cheque was presented for collection on 07.04.2010, it was returned on 10.04.2010 as 'Payment Stopped by the Drawer'. Therefore the complainant had issued a Statutory Notice dated 29.04.2010 to the accused and the same was received by the accused on 01.05.2010. On receipt of the said legal notice, the



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accused had issued a Reply Notice dated 12.05.2010 with false averments.

Thereafter, the accused failed to settle the loan amount. Hence the complaint.

4. Thereafter, the Trial Court has taken cognizance for the offence under Section 138 of Negotiable Instruments Act, issued process to the accused and upon the appearance of the accused, copies of documents relied on by the complainant, were furnished to the accused under Section 207 of Cr.P.C. and thereafter the substance of the charge for the offence under Section 138 of Negotiable Instruments Act was read over to the accused and he denied the same. Thereafter, the complainant, in order to prove his case, examined PW1 to PW4 and marked Ex.P.1 to Ex.P.10. On the side of accused, DW1 and DW2 were examined and Ex.D1 to Ex.D11 were marked.

5. After completion of complainant side evidence, the accused was examined under Section 313(1)(b) of Cr.P.C. with regard to the incriminating evidence let in against him and he also denied the same. The Trial Court, after hearing both sides and analysing the evidence adduced on



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both sides, found the accused not guilty of the offence under Section 138 of Negotiable Instruments Act and acquitted the accused from the charge.

6. As against the said acquittal judgment, the complainant had preferred an appeal in Crl.A. No.45 of 2018 before the learned Principal District Judge, Thoothukudi. Wherein, the Appellate Court has dismissed the appeal for default due to non-payment of Batta.

7. Aggrieved over the said judgment of the Appellate Court, the complainant has preferred this Revision Petition on the following grounds:

7(i) The Trial Court has not analysed and weighed evidences in the proper scales of law.

7(ii) The Trial Court ought not to have concluded that the lost / disputed cheque was utilized by the complainant for one Murugaperumal.

7(iii) The Trial Court ought not to have discussed beyond its scope with regard to the Promissory Note/Ex.P.6.

7(iv) The Trial Court ought to have considered the signature of



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the respondent / accused is being admitted in the Promissory Note and Cheque and hence the execution of the instruments are valid in the eye of law.

7(v) The Trial Court ought not to have accepted the defence version when the accused has not answered or proved that why and for whom, the promissory note and cheque were kept signed but unfilled, till it is lost, is not explained by the defence either through oral or documentary evidences.

7(vi) The Trial Court ought not to have concluded that there is a contradiction in the place of issuance of the document of the instrument.

7(vii) The Lower Court ought to have considered that the appellant / complainant is not bound under Port Trust Employees' Regulation as he was not an employee of Port Trust when the loan was disbursed in the year 2009.

7(viii) The Trial Court ought not to have considered that the



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delayed marking of the Promissory Note makes the Court to think that the appellant / complainant is incapable of giving the said amount to the respondent / accused.

7(ix) The Trial Court ought to have looked into the evidence of PW1 along with PW2 with regard to the income tax of the complainant.

7(x) The Trial Court ought not to have taken a view that non-sending of rejoinder is fatal to the complainant and has decided this point against the settled principles of law by the Hon'ble Supreme Court.

7(xi) The accused has not rebutted through proper, cogent and documentary evidences.

7(xii) The Trial Court has failed to analyse the documents marked on the side prosecution in a proper manner along with evidences and failed consider the said documents without any reasons.



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7(xiii) When the evidences were very much available leading to conviction of the accused, the Trial Court, had failed to consider the same and rejected any reasons and there was no discussion about the same.

7(xiv) The Trial Court, has misunderstood and misconstrued, the principle of preponderance and probabilities, which have to be proved under strict and cogent proof.

7(xv) The Appellate Court ought not to have dismissed the appeal for default and ought to have decided the matter on merits.

7(xv) The Lower Court has overseen that even though Advocate was on record, then there is no necessary process again in the main appeal.

8. The learned counsel appearing for the revision petitioner would contend that the accused borrowed a sum of Rs.3 lakhs from the



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complainant and thereafter, in order to settle the above said loan amount, the accused issued a cheque dated 25.02.2010 for a sum of Rs.3 lakhs and the same was presented for collection, it was returned with memo as “payment stopped by the drawer” and thereafter the complainant has issued a legal notice to the accused. The accused, on receipt of the notice, gave a false reply. But he did not settle the amount. Hence the complainant lodged a cheque complaint before the learned Judicial Magistrate, Fast Track Court, Thoothukudi.

8.1. In order to prove the case of the complainant, he examined PW1 to PW4 and marked Ex.P.1 to Ex.P.10. On the side of defence DW1 and DW2 were examined and Ex.D1 to Ex.D11 were marked. In the Trial Court, without considering the evidences adduced on the complainant's side erroneously acquitted the accused. As against the said acquittal judgment, the complainant has preferred an appeal before the learned Principal District Judge, Thoothukudi and the Appellate Court has dismissed the appeal for default due to non-payment of Batta. The Appellate Court, without hearing the appellant and without considering the evidences, dismissed the appeal. The Trial Court failed to consider the case of the complainant in a proper



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perspective manner and erroneously dismissed the appeal. The Trial failed to consider the rebuttal of presumption under Section 139 of Negotiable Instruments Act in favour of the complainant. Further the Appellate Court has not given any opportunity and the case was dismissed for non-payment of Batta. The Appellate Court have to give an opportunity to the complainant to put forth his arguments before the Appellate Court. Without giving any opportunity, the Appellate Court has dismissed the appeal. Therefore the judgment of the Appellate Court is liable to be set aside and hence the learned counsel appearing for the petitioner has requested this Court to remand back the case for fresh hearing by the Appellate Court.

9. The learned counsel appearing for the respondent / accused would contend that the complainant has filed the complaint with false allegations and the Trial Court after analysing the evidence adduced on both sides has correctly acquitted the accused. The accused denied the issuance of cheque and the amount borrowed by him. The accused misplaced the cheque with his signature and thereby, he gave instructions to the bank to stop payment of cheque and also gave advertisement in "Tamil Daily". In order to prove the case of the accused, he examined DW1 and DW2 and Ex.D1 to Ex.D11



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were marked. On the side of complainant, PW1 to PW4 were examined and Ex.P.1 to Ex.P.10 were marked. The Trial Court, after elaborate discussion, has correctly acquitted the accused. As against the judgment, the complainant has preferred an appeal, but in the above said appeal, he failed to pay Batta and thereby, the Appellate Court dismissed the Appeal. Therefore, this revision petition has no merits. However, without admitting the allegations made in the grounds of appeal, he has no objection to remand back the case to the Appellate Court for fresh hearing.

10. This Court, heard both sides and perused the entire materials available on record, the Judgments passed by the Courts below and the grounds of revision.

11. Upon hearing both sides and perusing the entire materials on record, now the point for determination in this revision petition is ***whether the judgment passed by the Appellate Court made in C.A. No.45 of 2018 on the file of the Principal District Judge, Thoothukudi dated 20.09.2018 is sustainable in law and on facts.***

12. **Points:-** The case of the petitioner / complainant is that the



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accused had borrowed a sum of Rs.3,00,000/- and in order to discharge the said loan, a cheque dated 25.02.2010 for a sum of Rs.3 lakhs and when the same was presented for collection, it was returned as "payment stopped by the drawer". Thereby, he issued a Legal Notice to the accused and the accused has issued a reply notice, but he did not settle the amount. Hence the complainant has lodged a cheque complaint. In order to prove the case of the complainant, PW1 to PW4 were examined and Ex.P.1 to Ex.P.10 were marked.

13. The defence contention is that he has not borrowed any money from the complainant and he has not issued any cheque to him for the above said loan amount. The signed cheque was misplaced by the accused and thereby, he gave instruction to the bank to stop payment and also he gave an advertisement in "Tamil Daily" and thereby, the accused denied the execution of the promissory note and issuance of cheque. In order to prove his contention, DW1 and DW2 were examined and Ex.D.1 to Ex.D.11 were marked. The Trial Court, after elaborate discussion, acquitted the accused from the charge under Section 138 of Negotiable Instruments Act.



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14. As against the said judgment, the complainant had preferred an appeal in Crl. A. No.45 of 2018. When the case was posted for hearing, there was no representation for the appellant and Batta was also not paid and thereby, the case was dismissed for default. During the course of arguments, the learned counsel appearing for the appellant requested this Court to give an opportunity to the appellant and to remand the case to the Appellate Court. Though, the petitioner failed to rise any ground with regard to the remanding of case to the Appellate Court, he has submitted before this Court that in order to give a chance to the complainant, it is just necessary to remand back the case for fresh hearing. The learned counsel for the respondent/accused has also not raised any serious objections.

15. Considering the above said submissions and considering the nature of the case and in order to give fair chance to the complainant, it is appropriate to set aside the judgment of the Appellate Court and remand back the case to the Appellate Court for fresh hearing. The case was dismissed for non-payment of Batta and now the learned counsel for the petitioner submitted that he is ready to pay Batta in the event of remitting back the case to the Appellate Court.



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WEB COPY 16. Considering the rival submissions put forth on either side, this Court is of the opinion that it is appropriate to set aside the judgment passed by the Appellate Court and to remand back the case to the Appellate Court for fresh hearing. The petitioner is hereby directed to pay necessary Batta before the Appellate Court within a period of 1 week from the date of receipt of the case by the Appellate Court.

17. In the result, the judgment passed in Crl. A. No.45 of 2018 by the learned Principal District Judge, Thoothukudi dated 20.09.2018 is hereby set aside and the case is remitted back to the Principal District Court, Thoothukudi for fresh hearing. The Appellate Court is hereby directed to dispose the case within 4 months from the date of receipt of a copy of this order.

18. Accordingly, this Criminal Revision Petition is disposed of.

17.11.2023

Index : Yes / No

Internet : Yes / No

Neutral Citation Case :Yes/No

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To

1. The Principal District Judge, Thoothukudi.
2. The Judicial Magistrate, Fast Track Court, Thoothukudi.



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P.DHANABAL., J.

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