



Crl.R.C.(MD).No.658 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2023

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).No.658 of 2021
Crl.M.P.(MD).No.7325 of 2021

Vijayaraghavan

... Petitioner/Accused

Vs.

A.Veeranan

... Respondent/Complainant

PRAYER: This Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records and set aside the order, dated 15.03.2021, passed by the learned V Additional District Judge, Madurai, in C.A.No.6/2019, confirming the order, dated 21.12.2018, passed by the learned Fast Track Court No.2, Judicial Magisterial Level Judge, Madurai in S.T.C.No.150 of 2017, to dismiss the complaint in S.T.C.No.150 of 2017, on the file of the learned Judicial Magisterial No.2, Fast Track Court at Magisterial Level, Madurai and to acquit the appellant/accused.

For Petitioner : Mr.S.Jagadeesh

For Respondent : Mr.S.J.Chakkra Varthy



Crl.R.C.(MD).No.658 of 2021

ORDER

WEB COPY

This revision case has been preferred against the order that has been passed by the learned V Additional District Judge, Madurai, in C.A.No. 6/2019, dated 15.03.2021, confirming the order, dated 21.12.2018, passed by the learned Judicial Magistrate No.II, Fast Track Court, Judicial Magisterial Level, Madurai in S.T.C.No.150 of 2017.

2.The case of the prosecution in brief:

The complainant, who is the respondent herein has filed a complaint under Section 200 Cr.P.C. making the following averments. Both himself and the accused were known each other for about three years. For the purpose of developing his business activities, the accused approached him during third week of September 2016 and requested Rs.3,00,000/-. He promised him to return the amount within short time. It was received by him on 25.09.2016. On 05.10.2016 towards the discharge of the above said loan amount, he issued a cheque bearing No.918303 for the above said amount. It was presented for payment. But returned as insufficient funds. He issued a statutory notice on 19.11.2016. That was received by the accused on 22.11.2016. But no payment was made. The above said cheque was returned due to the account closure. With these allegations the complainant



Crl.R.C.(MD).No.658 of 2021

has filed the private complaint before the trial Court. After all the formalities were over, the complainant himself was examined as PW1 and on his side 5 documents were marked. On the side of the accused, no evidence and no documents were marked.

3.At the conclusion of the trial, the trial Court found the accused guilty, convicted and sentenced him to undergo six months simple imprisonment and to pay compensation of Rs.3,00,000/- to the respondent.

4.Against the above said conviction and sentence, he filed the appeal before the V Additional District and Sessions Judge, Madurai, that also came to be dismissed by the the Judgment dated 15.03.2021. Against the concurrent Judgments, this revision has been preferred.

5.The learned counsel for the revision petitioner would submit that no supporting document was filed by the respondent to show the liability and signature was also denied. Contrary statement has been given by the complainant with regard to the above said transaction. The respondent submitted that for the purpose of proving the signature that it was not signed by him no step was taken by the revision petitioner and the respondent is



Crl.R.C.(MD).No.658 of 2021

holder in due course, who is entitled by law to maintain the action and he was not examined himself as a witness. The present plea that has been taken now has not been taken at the earliest opportunity or at the first instance. During the course of 313 Cr.P.C. proceedings also no such plea has been taken.

6.In the light of the above said plea, now let us go to the evidence on record to find out whether there was any illegality or irregularity in the concurrent judgment of both the courts. The complainant in the course of evidence has stated that the accused was known to him for about four or five years and only in the above said circumstances, he lend the money and no interest was also levied. He mobilized the fund from his own hands and also by obtaining money from his daughter, his son, etc., He would further stated that on the date of borrowal itself, he brought the above said cheque signed by him and dated as 05.10.2016. From this evidence, it is seen that he tried to say that the above said money was borrowed and as a security for repayment of the above said amount, post dated cheque was given by the accused. He presented the cheque on 24.10.2016. Since it was dishonoured, he sent notice and the accused sent the reply denying all the allegation and as well as the fact that he was not known to this complainant. But, no



Crl.R.C.(MD).No.658 of 2021

rejoinder was issued by him.

WEB COPY

7.From this portion of the evidence, it was seen that the revision petitioner has denied the signature as well as the transaction. It was further cross examined by the revision petitioner that the above said cheque was issued in blank in favour of one Nagarajan. Because of the relationship between the complainant and the above said Nagarajan at the instance of the Nagarajan a complaint has been filed. The Bank account was closed several years back. This is the defence that was taken by the revision petitioner that he denies the signature, transaction was denied and account was closed much earlier to the above said alleged transaction. But reading of the reply under Ex.P5 does not indicate the issue now that has been raised by the revision petitioner to the effect that he has denied his signature itself in the cheque. But, contra to the arguments, now what has been denied is only the transaction and the acquittance of the complainant. He has further stated that the account was closed much earlier. Similarly, it is no where stated that the above said cheque was issued in favour of one Nagarajan as has been now contended.

8.Now, the question which arises for consideration is, whether the



Crl.R.C.(MD).No.658 of 2021

denial of signature that was taken by the accused during the course of evidence can be taken into account. A wrong suggestion has been made to the respondent to the effect that in the reply notice, the revision petitioner has denied the signature itself. But, as I mentioned earlier, no such contention has been made. The trial Court has also taken note of the above said failure on the part of the accused to deny the signature itself. The trial Court is of the view that when signature is not denied naturally Section 138 of the Negotiable Instruments Act come into operation and the accused has been rebutted the presumption.

9.The revision petitioner is not even chosen to produce his admitted signature even for the comparison by the trial Court. During the course of 313 questioning he has stated that at the time of constructing his house his cheque book and as well as the house document was given to one Nagarajan, that has been misused. But, even during the course of cross examination of PW1, this contention has been raised. But, as I mentioned earlier, these two important contentions were not raised at the earliest opportunity namely reply notice. In the absence of any such proper explanation and proper rebuttal evidence on the side of the revision petitioner naturally the presumption under Section 139 NI Act has been



Crl.R.C.(MD).No.658 of 2021

drawn by the trial Court and also accepted by the Appellate Court.

WEB COPY

10.The learned counsel for the respondent would rely upon the judgment of the Honourable Supreme Court in the case of ***Mallavarapu Kasivisweswara Rao Vs. Thadikonda Ramalu Firm and Orders*** made in ***Civil Appeal No.5597 of 2001*** and the order of this Court in the case of ***P.Kamalam Vs. K.K.Kumarasamy*** made in Appeal Suit No.1376 of 1995. These are the settled proposition of law.

11.Moreover, as I mentioned earlier there is no proper rebuttal evidence on the side of the revision petitioner even by bringing the circumstances on record, which are capable of making out a proper defence. So that was not done. The belated attempt on the part of the revision petitioner to explain of the issue of the cheque has been rightly disregarded by the trial Court and as well as by the appellate Court. I find no reason to interfere with the above said concurrent findings. With regard to the sentence also six months simple imprisonment has been imposed apart from Rs.3,00,000/- as compensation amount. I find no reason also at this stage to interfere with the impugned judgment.



Crl.R.C.(MD).No.658 of 2021

12. Accordingly, this revision petition is **dismissed**. Consequently,
connected miscellaneous petition is closed.

07.02.2023

Index : Yes / No
Internet : Yes / No
TM

To

1. The V Additional District Judge, Madurai.
2. The Judicial Magistrate No.II, Fast Track court, Magisterial Level,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



Crl.R.C.(MD).No.658 of 2021

G.ILANGO VAN,J.

TM

Crl.R.C.(MD).No.658 of 2021

07.02.2023