



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 10/01/2023

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.RC (MD) No.739 of 2020

S.Sarbudeen : Petitioner/Appellant/Accused

Vs.

V.Mayandi : Respondent/Respondent/Complainant

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the judgment, dated 24/09/2020 made in CA No.38 of 2019 on the file of the Additional District and Session Judge, Theni, modifying the conviction and sentence imposed by the Judicial Magistrate Fast Track, Uthamapalayam, in CC No.53 of 2018, dated 15/07/2019 and set aside the same.

For Petitioner : Mr.K.M.Arunprasath

For Respondent : Mr.C.M.Arumugam

O R D E R

This criminal revision has been filed in order to set aside the judgment, dated 24/09/2020 made in CA No.38 of 2019 on the file of the Additional District and Session Judge, Theni.



2.The facts in brief:-

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The accused person borrowed a sum of Rs.2,50,000/- to meet out his family expenses, on 22/10/2017. To discharge the above said liability, he issued a cheque, dated 23/11/2017. At his request, it was presented for payment, on 23/11/2017, but it was dishonoured. In this regard, statutory notice was issued. Pending the above said process, he received another Rs.2,00,000/- and for that, amount also, he issued a cheque, on 19/03/2018. When it was presented for payment, on 19/03/2018, it was also returned due to insufficient funds and account blocked. After completing the statutory formalities, the private complaint was filed.

3.At the conclusion of the trial process, the trial court found that the case against the accused was proved and accordingly, he was convicted and sentenced to undergo 6 months SI and imposed a fine of Rs.5,000/- with default clause. Challenging the above said order, he filed appeal and that was heard by the learned Additional District and Sessions Judge, (FTC), Theni and it was also partly allowed, confirming the conviction, but the sentence was modified to payment of compensation of Rs.2,50,000/-.



4.Challenging the above said finding of the appellate court, this criminal revision has been filed.

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5.Heard both sides.

6.The learned counsel appearing for the petitioner would submit that absolutely, the case of the complainant is not a probable and believable one, since even according to the complainant, the earlier transaction was pending and the cheque was dishonoured and pending the above said process, the present transaction alleged to have been taken place is highly improbable one.

7.Per contra, the learned counsel appearing for the respondent would submit that both the transactions are entirely different and when the issuance of the cheque was not denied by the petitioner, then automatically presumption under section 138 of Negotiable Instruments Act will come into operation and the petitioner has not successfully rebutted the presumption.

6.Now with the above said facts and argument, let us go to the evidence on record.

7.A simple cross examination has been done to the effect that he has no source to lend money. But at the



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next line, it was suggested to him that he is doing money lending business and the cheque was given some seven years back. A simple three line evidence has been given in reply stating that in 2012, he borrowed a sum of Rs.20,00,000/- and returned the same with 10% interest. The unfilled cheque was used for the purpose of filing this case. He would further submit that in 2012, he discharged the above said amount. But he did not send any reply to the statutory notice. The petitioner wants to probabalise his defence by this three line evidence. When the signature is admitted and during the course of evidence also admitted, now he try to say that he already discharged his liability. If it is so, he ought to have issued a notice as observed by the appellate court. He omitted to do the same. Now, it is too late for him to say that he discharged the liability in 2012 itself. Even to probablise his defence, no circumstance has been brought on record. So also, there is no proper explanation on the apart of the petitioner, as to what happened to the earlier transaction, that is mentioned in the first para of the complaint. Even though, it has been stated that it is a different transaction, what actually transacted between the parties is not clear on record, except the statement of the parties as well as the disputed cheque. But however, since the petitioner has admitted the signature and the transaction and discharge plea has been raised, he has to probablise the same.



8.For the reasons stated above, I am of the considered view that the petitioner has not successfully established the probablise defence. So naturally, he has to incur the liability out of the above said issue of the cheque. So, I find no merit in this criminal revision.

9.In the result, this criminal revision is **dismissed**. The petitioner is directed to pay the compensation amount, as ordered by the appellate court.

10/01/2023

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Judicial Magistrate,
Uthamapalayam.
- 2.The Additional District and Sessions Judge,
Theni.



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G.ILANGOVAN, J

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