



CrI.R.C.(MD)No.275 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 11.04.2023

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THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CrI.R.C.(MD)No.275 of 2018

and

CrI.M.P.(MD)No.2762 of 2020

K.Venkatraman

... Petitioner

Vs.

1.M.Sargunam

2.The State of Tamilnadu through
The Inspector of Police,
Vadasery Police Station,
Rep.by the Public Prosecutor,
Nagercoil.

... Respondent

PRAYER : Criminal Revision Case filed under Sections 397 & 401 of the Code of Criminal Procedure, to set aside the judgment passed in CrI.A.No.38 of 2013 dated 07.04.2018 on the file of the Sessions Court, Kanyakumari at Nagercoil dismissing the appeal and confirming the order passed in C.C.No.19 of 2012 dated 16.04.2013 on the file of the learned Judicial Magistrate(FTC) Court No.II, Nagercoil and acquit the petitioner.



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For Petitioner : Mr.R.J.Karthick
For R2 : Mr.M.Vaikkam Karunanithi,
Government Advocate(Crl.side)

ORDER

This Criminal Revision Case has been filed to set aside the judgment passed in Crl.A.No.38 of 2013 dated 07.04.2018 on the file of the Sessions Court, Kanyakumari at Nagercoil dismissing the appeal and confirming the order passed in C.C.No.19 of 2012 dated 16.04.2013 on the file of the learned Judicial Magistrate(FTC) Court No.II, Nagercoil and acquit the petitioner.

2.The petitioner is an accused in the complaint lodged by the first respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.

3.The crux of the complaint is that on 17.07.2002, the Mercantile



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Bank had sanctioned over draft loan amount of Rs.10,00,000/- in favour of the petitioner based on the first respondent's dwelling property as security. The Bank repeatedly issued notices. Finally, on 18.03.2004, the first respondent had received a demand notice under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to discharge the outstanding loan amount with future interest. On 21.12.2004, the first respondent received a notice for sale of the secured assets. Therefore, the first respondent contacted the petitioner. The first respondent was directed to settle the entire amount and the said amount will be repaid by the petitioner. Believing his words, the first respondent paid loan amount and in turn, the petitioner issued cheque for a sum of Rs.12,50,000/- in favour of the first respondent. The cheque was presented for collection and the same was returned dishonoured for the reason that “funds insufficient”. After causing statutory notice, the respondent initiated proceedings under Section 138 of NI Act.

4.On the side of the first respondent, he had examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.12. On the side of the petitioner, no



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one was examined and marked Ex.D1 and Ex.D2. On perusal of oral and documentary evidence, the trial Court found the petitioner guilty for the offence punishable under Section 138 of NI Act and sentenced him to undergo three months rigorous imprisonment and also ordered compensation of Rs.12,50,000/-, which is the cheque amount. Aggrieved over the same, the petitioner preferred an appeal and the same was also dismissed by confirming the conviction and sentence imposed by the trial Court. Hence, the present revision.

5.The learned counsel appearing for the petitioner would submit that out of Rs.12,50,000/-, the petitioner paid Rs.6,00,000/- and he is also ready and willing to pay the balance amount within a time frame fixed by this Court.

6.Considering the above facts and circumstances of the case, the conviction imposed by the Courts below is hereby confirmed. Insofar as the sentence is concerned, this Court is inclined to modify the sentence to the effect that the petitioner shall pay remaining amount of Rs.6,50,000/- directly to the first respondent by way of Demand Draft, on or before



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09.06.2023. If the petitioner fails to settle the cheque amount, the sentence imposed by the Courts below will be restored and the second respondent police is at liberty to secure the petitioner to serve remaining period of sentence. Accordingly, this criminal revision case is partly-allowed. Consequently, connected miscellaneous petition is closed.

11.04.2023

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

- 1.The Sessions Court, Kanyakumari at Nagercoil
- 2.Judicial Magistrate(FTC) Court No.II, Nagercoil
- 3.The Inspector of Police,
Vadasery Police Station,
Rep.by the Public Prosecutor,
Nagercoil.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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