



Crl.R.C.(MD).No.62 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2023

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).No.62 of 2020

V.Rameshmukar

... Petitioner

Vs.

M.Nadarajan

... Respondent

PRAYER: This Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records in Judgment in C.A.No.41 of 2019 on the file of the Fast Track Mahila Court, Dindigul, dated 13.09.2019, confirming the order of conviction passed by the Additional District Munsif cum Judicial Magistrate Court, Vedasandur in C.C.No.143 of 2007, dated 12.04.2019 and set aside the same and consequently, acquit the revision petitioner.

For Petitioner : Mr.S.Louis

For Respondents : Mr.C.Susi Kumar

ORDER

This Criminal Revision Case has been preferred against the Judgment in C.A.No.41 of 2019 on the file of the Fast Track Mahila Court, Dindigul, dated 13.09.2019, confirming the order of conviction passed by the Additional District Munsif cum Judicial Magistrate Court, Vedasandur



2.The brief facts in brief:

3. During the course of trial before the trial Court, on the side of Plaintiff he himself was examined as PW1 and 13 documents have



been marked as Ex.P1 to Ex.P13. On the side of the accused two witnesses have been examined as RW1 and RW2 and two documents were marked as Ex.R1 and Ex.R2. At the conclusion of the trial, the trial Court convicted the accused for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo two years simple imprisonment and to pay a fine of Rs.5,000/- in default to undergo thirty days simple imprisonment.

4. Against the above said judgment, he preferred appeal in C.A.No.49 of 2019 before the appellate Court, namely Fast Track Mahila Court, Dindigul, which was also dismissed concurring with the finding of the trial Court. Against which, this revision has been preferred.

5. The learned counsel for the petitioner would submit that the petitioner and the complainant were business partners and the capacity of the respondent to lend the above said money is also under dispute and even as per the judgment of the appellate court, this doubt was raised. Particulars of the cheque numbers mentioned in the complaint shows jumping. Not only that he has also disputed the signature. No steps was taken by the complainant to send the document for Expert opinion.



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6.Per contra, the learned counsel for the respondent would submit that issuing of the cheques were admitted and the capacity is not at all under dispute. In fact it is not at all disputed by the petitioner either at the time of trial or at the time of appeal.

7.So with this submissions, let us go to the evidence on record. The above said complaint was defended by the accused stating that he was running an international company and at the time of borrowing fertilizers on behalf of the company, the above said 8 cheques found missing. One Periyasamy, who is the son of the complainant was his friend. He stole away the above said cheques and gave the same to the complainant for the purpose of foisting this case.

8.During the course of cross examination, the complainant has admitted that the accused was running an international company and in the course of the above said business, he used to purchase fertilizers and has also known to him for about 10 years. He would also say that for lending the above said money, he did not receive any documents from him, except the above said cheques. It was also suggested to him that only on behalf of the above said company, the cheques were issued. But the company is not impleaded as an accused. The reason for issuing the separate cheques in



various amounts is not also explained by him.

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9.It was also suggested that the signature in Ex.P1 to Ex.P8 were signed by him. So this is the defence that was taken by the accused before the trial Court. But, no reply was issued by the revision petitioner to the statutory notice. The notice, which was sent by the respondent is marked as Ex.P11 and the acknowledgment card as Ex.P12. Even though there is denial on the part of the revision petitioner with regard to the receiving of the statutory notice, it is seen from the acknowledgment card that it was addressed to the revision petitioner to his address, which was mentioned in the complaint itself. When that is being so, bare denial on the part of the revision petitioner that it was not received by him, cannot be accepted and can be stated that it is only an after thought.

10.We find difference in signature in the disputed cheques and in the acknowledgment card. As I mentioned earlier, since it has been addressed to the revision petitioner to his address, it is for him to explain the same to the effect that it was not served upon him and signature also does not belonged to him by examining the postal authorities. In spite of that he has examined two Bank officials on his behalf. Even though it is not necessary for him get into the witness box and depose when he disputed the



very signature itself, it the duty to enter into the witness box and give evidence. And he has also not even chosen to produce his admitted signatures even for the purpose of comparison by the Court.

11.As pointed out by the respondent, the above said cheques were returned only for insufficient funds and not on the ground of difference of signature. So the belated and bare denial on the part of the revision petitioner cannot be taken into account at all.

12.Moreover, the explanation that has been offered by the revision petitioner that those cheques have been stolen by the complainant's son and gave the same to the complainant for the purpose of foisting this case is also not supported by any evidence. If it is really so, the revision petitioner ought to have given police complaint. But no such steps were taken. So from the evidence of PW1, which has been collected by the trial Court and as well as the appellate Court that the above said cheques were issued by the revision petitioner cannot be found fault.

13.With regard to the consideration, no doubt that there is some doubt with regard to the actual amount that was borrowed by the accused. Because, the total amount according to the complaint is Rs.18,23,000/-. As



pointed out by the revision petitioner, no one will lend money in a fraction.

Here it comes to the fraction. How the above said amount was calculated is not clear on record. So probable that interest would have been calculated.

But, there is no particulars with regard to the actual principal amount and interest. Even though it has been stated by the respondent that it was not lend for interest, but the fraction indicates the calculation by the interest.

What ever it may be, since the transaction is proved by the evidence of PW1, the above said fraction of amount need not be given much importance, since there is no proper rebuttable evidence on the side of the accused.

14.The trial Court has recorded a finding that from the evidence of DW2 the Bank Manager, Laxmi Vilas Bank, Dindigul, it was found that the accused was operating two accounts between 01.04.2007 and 30.06.2007. According to DW1, the accused was having sufficient money and he was examined to show the Bank account details of the complaint. And he would state that either before 09.04.2007 or after that he was having Rs.18,00,000/- in his account. From this alone no conclusion can be reached to the effect that the respondent did not have sufficient means to pay the money. Because according to the accused himself, the respondent was running a fertilizer business. Being a business man, he can mobilize the



fund and having sufficient money in his hands also. So the capacity also cannot be disputed.

15. With regard to the jumping of the cheque numbers, no conclusion can be arrived that those cheques were not issued on the date, it bears. So from the jumping numbers, the petitioner cannot expect this Court to draw an inference that he has probalilized his defence. So this ground is not available to him.

16. For the reasons stated above, I find absolutely no error or irregularity or illegality committed by the trial Court and as well as the appellate Court in recording the findings. I find no merit in this revision petition. This petition deserves to be dismissed. Accordingly, **dismissed.**

09.02.2023

Index : Yes / No

Internet : Yes / No

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To

1. The Judge, Fast Track Mahila Court, Dindigul
2. The Additional District Munsif cum Judicial Magistrate, Vedasandur.



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G.ILANGOVA,J.

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