



Crl.R.C.No.64 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.64 of 2021

B.Srinivas

... Petitioner

Vs.

M/s.Ganesh Investments,
Rep.by its Power of Attorney Agent,
P.Narayanasamy.

... Respondent

PRAYER : Criminal Revision Case filed under Section 397 r/w. 401 of the code of Criminal Procedure, 1973 to set aside the judgment and order dated 12.01.2017 passed in C.C.No.3305 of 2012 on the file of the Metropolitan Magistrate (Fast Track Court No.III), Saidapet, which was confirmed on 24.01.2020 in Crl.A.No.54 of 2017 on the file of the learned VII Additional Session Judge, Chennai.

For Petitioner : Mr.V.Jaisankar

For Respondent : Mr.G.Arulselvi



Crl.R.C.No.64 of 2021

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ORDER

The Criminal Revision Case has been filed against the conviction and sentence imposed on the petitioner vide judgment dated 24.01.2020 made in Crl.A.No.54 of 2017 by the learned VII Additional Session Judge, Chennai, confirming the judgment dated 12.01.2017 passed in C.C.No.3305 of 2012 by the learned Metropolitan Magistrate (Fast Track Court No.III), Saidapet.

2. The gist of the complaint is that the petitioner entered into hire purchase agreement with the respondent/complainant on 29.04.2010 for the purpose of purchasing Offset Printing Machine and Accessories by availing the loan of Rs.5,00,000/- and agreed to repay the loan amount in 25 equal installments with interest at 18% per annum and executed a promissory note in favour of the complainant. The petitioner paid the monthly instalment with interest till 07.01.2011 and paid a sum of Rs.50,000/- in cash on 12.05.2011. Thereafter, the petitioner did not pay the amount and committed default in payment of installments. The amount due and payable by the



CrI.R.C.No.64 of 2021

WEB COPY

petitioner to the respondent/complainant is Rs.3,62,493/- and to discharge the debt, the accused issue a cheque bearing No.177310 dated 16.02.2012 for a sum of Rs.3,62,493/-. When it was deposited by the respondent for collection with the Bank, it was dishonored with an endorsement "fund insufficient", pursuant to which, the respondent issued statutory notice dated 27.02.2012. The accused neither replied nor repaid the cheque amount which triggered the respondent to file a complaint under Section 138 of Negotiable Instruments Act.

3. On the side of the respondent/complainant, the complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P7 and on the side of the petitioner/accused, no witness was examined and no evidence was marked. The trial Court, appreciating the materials available on record, held that the accused has failed to rebut the presumption provided under Section 138 of Negotiable Instruments Act and has not explained the reason as to why he has given the cheque to the complainant and thereby, convicted the accused under Section 138 of Negotiable Instruments Act and sentenced him



CrI.R.C.No.64 of 2021

WEB COPY

to undergo six months simple imprisonment and directed him to pay the cheque amount. Aggrieved by the same, the accused preferred the appeal in C.A.No.54 of 2017 before the learned VII Additional Sessions Judge, Chennai and the Appellate Court, vide judgment dated 24.01.2020, dismissed the appeal confirming the conviction imposed on the petitioner by the trial Court vide judgment dated 12.01.2017. Challenging the same, the present revision case has been filed.

4. When the matter is taken up for hearing, the learned counsel appearing for the petitioner submits that the petitioner has deposited the entire cheque amount of Rs.3,62,493/- before the trial Court and a receipt to that effect has been filed before this Court. Hence, he prays that this Court may compound the offence u/s 138 of the N.I. Act, since the petitioner has paid the entire cheque amount.



CrI.R.C.No.64 of 2021

WEB COPY

5. In reply, the learned counsel appearing for the respondent submits that the respondent was made to run from pillar to post for the past about 10 years to get back the loan amount and therefore, he is not agreeing for compounding the offence.

6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

7. Indeed, the petitioner has obtained a sum of Rs.5,00,000/- as loan from the respondent and agreed to repay the loan amount with interest at 18% per annum, however, he paid the monthly instalment with interest till 07.01.2011 and gave a sum of Rs.50,000/- as cash to the respondent on 12.05.2011. Thereafter, he committed default in payment of installments and on continuous requests made by the respondent, the petitioner has issued the cheque which was returned as "fund insufficient" and thereby, the respondent issued statutory notice dated 27.02.2012 to the petitioner. Since the petitioner/accused neither replied nor repaid the cheque amount, the



Crl.R.C.No.64 of 2021

respondent instituted a complaint under Section 138 of Negotiable Instruments Act against the petitioner before the trial Court. The trial Court, evaluating the facts and the materials available on record, held that the accused failed to rebut the presumption provided under Section 139 of Negotiable Instruments Act and has not given the reason as to why he has given the cheque to the complainant, and convicted the petitioner under Section 138 of Negotiable Instruments Act and sentenced him to undergo six months simple imprisonment and directed him to pay the cheque amount, which was confirmed in Crl.A.No.54 of 2017 preferred by the appeal. Aggrieved over the same, the present criminal revision case has been filed.

8. During the pendency of this petition, the petitioner has deposited the cheque amount of Rs.3,62,493/- before the trial Court and a proof to that effect has also been filed before this Court, however, the respondent has not agreed for compounding the offence. Considering the nature of the offence committed by the petitioner and the fact that he has deposited the entire cheque amount of Rs.3,62,493/- before the trial Court,



CrI.R.C.No.64 of 2021

WEB COPY

though the respondent is not willing for compounding the offence due to the difficulties caused to him, however, it should not be lost sight of that the penal consequence under Section 138 of Negotiable Instruments Act is only for person who do not show any remorse and in the case on hand, the petitioner having paid the entire amount, principles of natural justice warrant compounding of the offence, but at the same time, seeing to it that the respondent is also compensated for the difficulties.

9. In such view of the matter, the conviction and sentence imposed on the revision petitioner/accused in C.C.No.3305 of 2012 on the file of the learned Metropolitan Magistrate, Fast Track Court No.III, Saidapet, which was confirmed in Criminal Appeal No.54 of 2017 by the learned VII Additional Sessions Judge, Chennai, is modified and the petitioner is directed to pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) as compensation to the respondent in lieu of sentence within a period of two weeks from the date of receipt of a copy of this order and submit a proof of payment before the learned Metropolitan Magistrate, Fast Track Court



Crl.R.C.No.64 of 2021

WEB COPY

No.III, Saidapet, in default of payment, he shall undergo simple imprisonment for a period of three months.

10. Accordingly, the Criminal Revision Case is disposed of with the aforesaid direction.

12.07.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
ssb

To

1. The learned IX Metropolitan Magistrate, Saidapet, Chennai.
2. The Public Prosecutor,
Madras High Court.



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Crl.R.C.No.64 of 2021

M.DHANDAPANI, J.

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Crl.R.C.No.64 of 2021

12.07.2024