



Crl.R.C.No.144 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 21.12.2024

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.R.C.No.144 of 2021

M.S.Suburaman

... Petitioner

Versus

1. V.Muraliraja

2. State Represented by
its Public Prosecutor
Coimbatore.

...Respondents

Prayer:- Criminal Revision is filed under Section 397 r/w 401 of Cr.P.C against the judgment dated 02.02.2021 made in C.A.No.396 of 2019 on the file of the learned V Additional District and Sessions Judge, Coimbatore confirming the judgment dated 30.10.2019 made in C.C.No.746 of 2017 on the file of the learned Judicial Magistrate Fast Track Court No.II (Magistrate Level), Coimbatore.

For Petitioner : Mr.A.Vignesh

For R1 : Mr.P.Maheshkumar
for Wallcliffs Law firm

For R2 : Mr.S.Vinoth Kumar
Government Advocate (Crl side)



CrI.R.C.No.144 of 2021

ORDER

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Criminal Revision is filed under Section 397 r/w 401 of Cr.P.C against the judgment dated 02.02.2021 made in C.A.No.396 of 2019 on the file of the learned V Additional District and Sessions Judge, Coimbatore confirming the judgment dated 30.10.2019 made in C.C.No.746 of 2017 on the file of the learned Judicial Magistrate Fast Track Court No.II (Magistrate Level), Coimbatore.

2. The brief facts, which are necessary for appreciation of evidence and to dispose of the Criminal Revision Case, are as follows:-

2.1. The Revision Petitioner herein is running a hotel under the name and style of Sri Balaji Bhavan/Hotel Saravana Bhavan in and around Tiruppur. The brother of the Respondent-1 was working in the hotel of the Revision Petitioner. He is suspected to have surreptitiously removed blank cheques duly signed by the Revision Petitioner from his table drawer. The Revision Petitioner has no acquaintance with the Complainant before the learned Judicial Magistrate, Fast Track Court No.II, (Magisterial Level), Coimbatore, who is the Respondent-1 herein. The Revision Petitioner as



Accused was taken by surprise when he received notice from the Respondent-1/Complainant. The Revision Petitioner stoutly denied the contents of the notice stating that he does not know the Complainant. Later on, the Revision Petitioner came to understand that the brother of the first Respondent/Complainant who was working in the Hotel run by the Accused had surreptitiously removed two cheques. The Complainant does not mention on what proportion they had separated the cheques, which is not mentioned in the complaint. Also, it was stated that at the time of borrowal, the Respondent-1 insisted for payment of 16% per annum. But the Respondent-1 had not produced any bank account or any other documents as proof of fact that the Revision Petitioner had paid interest.

2.2. The Complainant had filed private complaint under the provisions of the Negotiable Instruments Act, 1881 before the learned Judicial Magistrate, Fast Track Court No.II, (Magisterial Level), Coimbatore. After trial, the learned Judicial Magistrate, Fast Track Court No.II, (Magisterial Level), Coimbatore, had rejected the evidence of the Revision Petitioner as Accused.

2.3. Aggrieved by the judgment of conviction recorded by the



learned Judicial Magistrate, Fast Track Court No.II, (Magisterial Level), Coimbatore, the Accused had preferred appeal before the learned V Additional District and Sessions Judge, Coimbatore, in Crl.A.No.396 of 2019 seeking to set aside the judgment of conviction recorded by the learned Judicial Magistrate, Fast Track Court No.II, (Magisterial Level), Coimbatore, in C.C.No. 746 of 2017. After hearing the arguments of both sides, the learned V Additional District and Sessions Judge, Coimbatore, by judgment dated 02.02.2021 in Crl.A.No.396 of 2019 dismissed the Appeal and confirmed the judgment of conviction recorded by the learned Judicial Magistrate, Fast Track Court No.II, (Magisterial Level), Coimbatore, in C.C.No. 746 of 2017.

2.4. Aggrieved by the dismissal of the Appeal, the Appellant in Crl. A.No.396 of 2019, the Accused before the learned Judicial Magistrate, Fast Track Court No.II, (Magisterial Level), Coimbatore, had preferred this Criminal Revision Case.

3. It is the submission of the learned Counsel for the Revision Petitioner that the Revision Petitioner is the Accused in C.C.No.746 of 2017 and the Appellant in C.A.No.396 of 2019.



WEB COPY 4. It is the further submission of the learned Counsel for the Revision

Petitioner that the Revision Petitioner herein is running a hotel under the name and style of Sri Balaji Bhavan/Hotel Saravana Bhavan. The Revision Petitioner has no acquaintance with the Respondent-1, who is the Complainant before the Trial Court. The Revision Petitioner as Accused was taken by surprise when he received notice from the Respondent-1/Complainant that he had advanced a loan of Rs.10 lakhs to the Accused for the development of his business.

5. After receipt of the statutory notice, the Revision Petitioner had stoutly denied the contents of the notice, stating that he does not know the 1 st Respondent/Complainant. Later on, he came to understand that the brother of the 1 st Respondent/Complainant was working in the hotel run by the Accused. The two cheques had been surreptitiously removed by the brother of the Complainant. The Complainant does not mention on what proportion they had separated the cheques, which is not mentioned in the complaint. Also, it was stated that at the time of borrowal, the Respondent-1 insisted for payment of 16% interest. But he had not produced any bank account or any other documents as proof of fact that the



Revision Petitioner had paid interest.

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6. It is the further submission of the learned Counsel for the Revision Petitioner that no prudent man will advance loan of Rs.10 lakhs without obtaining any document from the alleged borrower.

7. Here, it is the case of the Respondent-1 that the Accused had availed loan. He had filed it only based on the cheques which were surreptitiously removed from the Accused.

8. Also, the Revision Petitioner as Accused had sought Income Tax returns of the Complainant. The same was produced by the Complainant before the Trial Court. The Complainant as P.W-1 admitted in his cross-examination that he is drawing income of Rs.55,000/- and he is residing as a tenant in his house. A person of the 1st Respondent's income and status is not expected to advance a loan of Rs.10 lakhs.

9. The learned Judicial Magistrate, Fast Track Court No.II (Magisterial Level), Coimbatore, ignored the valuable defence of the Accused and had mechanically convicted the Accused as though the



averments in the complaint had been made out. Only after receipt of the statutory notice from a stranger who claims to be the Complainant, the Petitioner found out that the cheques had been removed surreptitiously by the brother of the Complainant. Therefore, he had preferred the criminal complaint before the Inspector of Police.

10. Mere possession of the cheques will not help the Respondent-1/Complainant to record a conviction against the Revision Petitioner. The complaint preferred by the Accused against the Complainant was also marked on the side of the Accused. To prove the contention of the Complainant, no document had been marked. Income Tax assessment had not been marked. He only filed the complaint based on the presumption available in the Negotiable Instruments Act. The valuable points raised by the Revision Petitioner/Accused was ignored by the trial Court, who had convicted the Accused in C.C.No.746 of 2019.

11. Aggrieved by the same, valuable defence of the Accused was raised in the Appeal in Crl.A.No.396 of 2019 before the learned V Additional District and Sessions Judge, Coimbatore.



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12. After hearing both parties, the learned V Additional District and Sessions Judge, Coimbatore, dismissed the Criminal Appeal. Both the Courts failed to appreciate the facts and law raised by the Accused, and had mechanically dismissed the Appeal. Therefore, the Criminal Revision Case is filed.

13. Learned Counsel for the Revision Petitioner seeks to set aside the judgment of conviction recorded by the learned Judicial Magistrate, Fast Track Court No.II (Magisterial Level), Coimbatore, and confirmed in judgment in Crl.A.No.396 of 2019 on the file of the learned V Additional District and Sessions Judge, Coimbatore, and to acquit the Accused from the charges.

14. As per the submission of the learned Counsel for the Respondent, the signature of the Accused in the cheque is not denied. It is the defence of the Accused that the Complainant was a stranger to the Accused. Also he had stated that the cheques were found missing and how it reached the hands of the Complainant was not known.

15. The learned Counsel for the Respondent invited the attention of



this Court to Para 11 of the judgment of the trial Court in discussing the defence of the Accused and the fact that the Accused had not stated so in the reply notice under Ex.P-7. After recording the proceedings under Section 313 of Cr.P.C by putting up questions to the Accused regarding incriminating evidence, the Accused did not enter the witness box as Defence witness. Instead he had examined only the Bank Manager regarding the stop payment. Therefore the learned Judicial Magistrate, Fast Track Court-II (Magisterial level), Coimbatore has rejected the defence of the Accused that he does not have any prior liability with the Complainant and that he had issued cheque under Ex.A-1 and Ex.A-2 to the Complainant.

16. Also the learned Counsel for the Respondent invited the attention of this Court to the re-appreciation of evidence by the learned V Additional District and Sessions Judge, Coimbatore to the judgment in C.A.No.396 of 2019 dated 02.02.2021 in paragraph Nos.15 to 35 and rejected the defence of the Accused. Therefore the submission of the learned Counsel for the Revision Petitioner that the judgment of the learned V Additional District and Sessions Judge, Coimbatore is erroneous and is to be set aside was rejected. The Accused himself had not entered



the witness box. Accused had not discharged the burden cast upon him as per the reported decision in the case of ***Kishan Rao -v- Shankargouda*** reported in ***(2018) 8 Supreme Court cases 165***. The Accused had not discharged the burden cast upon him as per Section 118 and 139 of Negotiable Instruments Act.

17. The learned Counsel for the Respondent submitted that as per the reported decision in ***Kishan Rao -v- Shankargouda*** reported in ***(2018) 8 Supreme Court cases 165.***, the Revision Court cannot re-assess evidence or interfere with the concurrent finding of the fact on appreciation of evidence as the golden rule. Therefore the revision is to be dismissed. The Complainant had discharged the burden cast upon him by examining witness and marking documents. The Accused had not proved the defence by entering the witness box. The Court can draw adverse inference against the Accused.

18. Both the trial Court and the Appellate Court had on re-appreciation of evidence rejected the defence of the Accused. Therefore as Revision Court, this Court cannot re-appreciate the evidence. This revision is to be dismissed as having no merit.



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Point for Consideration:

Whether the revision is to be allowed and the judgment of the learned Judicial Magistrate, Fast Track Court-II (Magisterial level), Coimbatore and the judgment of the learned V Additional District and Sessions Judge, Coimbatore confirming the finding of the learned Judicial Magistrate, Fast Track Court-II (Magisterial level), Coimbatore, is to be set aside as perverse?

19. When the trial Court and the Appellate Court had arrived at a conclusion, the Revision Court cannot interfere with the concurrent finding of the fact and law. Only if there is erroneous finding, either by the trial Court or by the first Appellate Court, revision Court can exercise discretion.

20. On perusal of the judgment of the trial Court and the Appellate Court, it is found proper and does not warrant any interference from this Court as Revision Court. The defence of the Accused before the learned Judicial Magistrate, Fast Track Court-II (Magisterial level), Coimbatore



CrI.R.C.No.144 of 2021

was rejected by the learned Judicial Magistrate. On re-appreciation of evidence, the learned V Additional District and Sessions Judge also rejected the defence of the Accused on the ground that Accused had cross examined the Complainant in which the learned trial Judge had observed that the Accused and the Complainant are known to each other. From the suggestions put by the Accused to the Complainant, the Court had arrived at a conclusion that both were known to each other. Therefore the claim of the Accused that he does not know who the Complainant was found not an acceptable defence. What was stated in the reply notice was not stated in the evidence by the Accused. The Accused had avoided the witness box, the Court can draw adverse inference against the Accused who had avoided the witness box. Therefore the Court has to draw adverse inference against the Accused. Therefore the defence of the Accused need not be considered by this Court. Further he himself had not let in any evidence to deny the claim of the Complainant. Therefore the revision has to be rejected.

21. In the light of the above discussion, the point for consideration is answered against the Revision Petitioner and in favour of the Complainant.

The judgment of the learned Judicial Magistrate, Fast Track Court-II



CrI.R.C.No.144 of 2021

(Magisterial level), Coimbatore and the judgment of the learned V Additional District and Sessions Judge, Coimbatore confirming the finding of the learned Judicial Magistrate, Fast Track Court-II (Magisterial level), Coimbatore is found proper.

22. In the result, this **Criminal Revision Case is dismissed**. The Accused is directed to pay the Compensation awarded by the the learned Judicial Magistrate, Fast Track Court-II (Magisterial level), Coimbatore, within a period of two months from the receipt of copy of this order failing which the Complainant within his discretion to file appropriate petition under Section 82 of Cr.P.C. seeking direction against the Accused before the learned Judicial Magistrate, Fast Track Court-II (Magisterial level), Coimbatore to detain the Accused in prison for the period of sentence stated in the judgment of the learned Judicial Magistrate, Fast Track Court-II (Magisterial level), Coimbatore.

21-12-2024

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Index : Yes/No

Speaking/Non-speaking order



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Crl.R.C.No.144 of 2021

SATHI KUMAR SUKUMARA KURUP, J

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To

1. The V Additional District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate,
Fast Track Court No.II (Magistrate Level),
Coimbatore.
3. The Public Prosecutor
Coimbatore.

Order in

Crl.R.C.No.144 of 2021

21-12-2024