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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.03.2024

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The Honourable Mr.Justice M.NIRMAL KUMAR

Criminal Revision case No.341 of 2024
and Crl. M.P.No.3152 and 3151 of 2014

V.Gunasekaran

: Petitioner

vs.

A.Sumathi

: Respondent

Prayer: The Criminal Revision Case has been filed under Sections 397 and 401 of Cr.P.C. To call for the records pertaining to the judgment dated 12.12.2023 in C.A.No.730 of 2023 passed by the learned Principal Sessions Judge, Chennai by confirming the order of learned Metropolitan Magistrate, Fast Track Court-I, Egmore @ Allikulam, Chennai in C.C.No.3970 of 2020 dated 18.10.2023 and set aside the same by allowing the above Criminal Revision Petition.

For Petitioner

: Mr.S.Sasikumar

ORDER

The petitioner is the accused and he challenges the conviction and sentence imposed upon him under Section 138 of the Negotiable Instruments Act.



2. The facts of the case are as follows:

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The respondent filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act, with an allegation that the respondent has intended to purchase land of about 3785 Sq. ft. at Perumal Kovil Street, from the petitioner and subsequently entered into a sale agreement for a sum of Rs.7,50,000/- and paid an advance of Rs.2,50,000/- on 17.04.2017 and on the same day, a sale agreement was executed for the said property. The petitioner has also received an additional Rs.10,000/- at the time of issuing land documents. Hence, the respondent had paid the accused a sum of Rs.2,60,000/- for the said property.

3. The petitioner had entered another sale agreement with one L. Mari to sell the above said property. After the settlement talks between the petitioner and the respondent, the petitioner assured to pay a sum of Rs.3,38,000/-, for which, he has paid a sum of Rs.50,000/- to the respondent on 12.02.2018 and he has issued a cheque dated 15.04.2018 bearing cheque No.043366 of Union Bank of India, Kolathur Branch for a sum of Rs.2,97,000/- and When presented with the bankers, was returned dishonoured with an endorsement "Funds insufficient", and that the



statutory notice issued subsequently also did not evoke any response. After accepting the respondent's case, the learned Metropolitan Magistrate, Fast Track Court-I, Egmore @ Allikulam, Chennai, convicted the petitioner and sentenced him to suffer simple imprisonment for a period of one year and to pay a fine of cheque amount with a default sentence of simple imprisonment for three months, which, on appeal, was confirmed. Challenging the said Judgment, the petitioner has filed an appeal before the learned Principal Sessions Judge, Chennai and the same was dismissed for default on the ground that the appellant has not appeared before the Trial Court on the date of judgment and the trial Court issued NBW against the appellant. However, the appellant has not surrendered before the Sessions Court and obtained bail order. Hence, the present revision.

4. The contention of the petitioner is that the cheque amount of Rs.2,97,000/- is the disputed amount. The respondent had purchased a land from the petitioner and they were entered into sale agreement and advance was paid on 17.04.2017. Thereafter, the respondent had not complied with the terms of the agreement. Therefore, the petitioner had entered into another sale agreement with one Mari for higher rate. The said Mari had



agreed to pay back the agreement amount to the respondent. There was some dispute in the payment of cheque amount between the petitioner and the respondent, due to which, the respondent had filled up the blank cheque, which was issued by the petitioner for security purpose and a case has been launched. The trial Court had failed to consider the facts in total and merely gone on a presumption that the signature found in the cheque has not been denied by the petitioner. Hence, the trial Court has convicted the petitioner as stated above, which is not in proper.

5. The learned counsel for the petitioner further submitted that the petitioner had sent a cheque to forensic department and the said fact was informed to the trial Court. The trial Court, without considering the same, convicted the petitioner and sentenced him as stated supra.

6. The learned counsel for the petitioner further submitted that challenging the judgment of the trial Court, the petitioner filed an appeal before the Principal Sessions Judge, which is a statutory appeal. The Principal Sessions Judge, has failed to receive the petition for suspension of sentence, dismissed the appeal on the ground that NBW has been issued



against the petitioner as he was not appeared before the trial Court at the time of passing the judgment. Failing to look at the fact that Section 138 of NI Act, is bailable offence. On appearance of the petitioner, NBW ought to have been recalled and the appeal ought to have been heard on merits as contemplated under Section 381 of Cr.P.C. In this case, dismissing the appeal for default is not proper. Hence, the learned counsel prays that the impugned orders are liable to be set aside.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. On perusal of records, it is seen that the Principal Sessions Judge had dismissed the appeal for default by judgment dated 12.12.2023 which is against principle of law and the procedure contemplated under Section 381 of Cr.P.C. In view of the same, judgment dated 12.12.2023 in C.A.No.730 of 2023 is set aside.

9. Accordingly, the revision is allowed with the following directions:

(I) The petitioner is directed to deposit 20% of the



cheque amount viz., Rs.60,000/- to the credit of C.C. No.3976 of 2020 before the Court of Metropolitan Magistrate, FTC-I, Egmore @ Allikulam, Chennai within a period of two weeks from the date of receipt of a copy of this order;

(ii) without raising any technicalities, the learned Metropolitan Magistrate shall accept the payment payable by the petitioner;

(iii) Thereafter, the petitioner is directed to re-submit the application in CA.No.730 of 2023 and to file a petition for suspension of sentence before the learned Sessions Judge, for re-consideration along with payment receipt; and

(iv) Upon receipt of such payment, the learned Principal Sessions Judge, shall consider the same and pass orders on merits and in accordance with law, within period of two weeks.

Consequently, connected miscellaneous petitions are closed.

04.03.2024

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Note to office: Issue order copy on 05.03.2024

Index : Yes/No

Website: Yes/No



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1. The Principal Sessions Judge, Chennai.
2. The Metropolitan Magistrate, Fast Track Court-I,
Egmore @ Allikulam, Chennai.



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M.NIRMAL KUMAR,J.

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