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Crl.R.C.No.330 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.330 of 2021

J.Manjini

... Petitioner

Vs.

1.C.Balasubramanian

2.State, rep. By
The Public Prosecutor,
Pondicherry.

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records made in impugned judgment dated 04.12.2019 in S.T.C.No.2482 of 2015 passed by the learned Judicial Magistrate No.2, Puducherry and modified judgment by the 3rd Additional Sessions Judge, Puducherry in Crl.Appeal No.10 of 2020 dated 22.01.2021 and set aside the same as illegal and acquit the petitioner.

For Petitioner : Mr.K.Kesavan

For R1 : Mr.R.Thiagarajan

For R2 : Mr.K.S.Mohandass
Public Prosecutor [Pondicherry]



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ORDER

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The petitioner/accused in a private complaint under Section 138 of Negotiable Instruments Act filed by the first respondent in S.T.C.No.2482 of 2015 on the file of the learned Judicial Magistrate No.II, Puducherry, was convicted by the Trial Court by judgment dated 04.12.2019 and sentenced to undergo two years simple imprisonment and to pay a compensation of Rs.6,00,000/-, in default, to undergo three months simple imprisonment. Aggrieved against the same, the petitioner preferred an appeal before the learned III Additional Sessions Judge, Puducherry in C.A.No.10 of 2020. The Lower Appellate Court by judgment dated 22.01.2021 dismissed the appeal but modified the sentence alone by sentencing the petitioner to undergo six months simple imprisonment and to pay compensation of Rs.3,00,000/-, in default to under three months simple imprisonment and fine of Rs.5,000/-. Against which, the present revision petition is filed.

2.The contention of the learned counsel for the petitioner is that the petitioner borrowed Rs.1,00,000/- from the first respondent, for which, the petitioner handed over RC book of the vehicle as security. The petitioner



also paid the interest. The respondent using the stale cheque and the undertaking letter executed for earlier transaction projected a case against the petitioner. The petitioner probalilized his defence by examining witnesses, namely, Somasundaram/DW1 and Suresh/DW2. The Trial Court without considering the evidence of DW1 and DW2 imposed the maximum sentence of two years and doubled the cheque amount as compensation. The Lower Appellate Court though modified the sentence and reduced the compensation amount has not considered the evidence in totality and also failed to see that the petitioner had probalilized his defence.

3.The learned counsel for the first respondent/complainant opposed the same stating that the petitioner has been giving one reason or other and delaying the trial as well as the appeal. The cheque in this case was issued in the year 2014 and the complaint was filed in the year 2015, but the trial get concluded only in the year 2019. Thereafter, appeal was filed in the year 2020 and finally, the Lower Appellate Court dismissed the appeal and modified the sentence in the year 2021. The petitioner borrowed money from the first respondent, gave an undertaking letter along with other



documents, which were marked as Ex.P1 to Ex.P8. The petitioner though examined his friends DW1 and DW2, he failed to get into the box and produce any documents, on the other hands his friends have given evasive answers and admitted that they were not present at the time of issuance of cheque, they were also not certain about the discharge of the liability. Though they took a stand that only Rs.1,00,000/- has been borrowed from the first respondent, it was not probabilized with any materials. The Trial Court as well as the Lower Appellate Court finding the petitioner's hollowness in the defence and the respondent proving the case against the petitioner and he had not denied his signature in the cheque or issuance of cheque had rightly convicted the petitioner. He would submit that the petitioner had been making promise that he would settle the first respondent by paying the cheque amount on several occasions but failed to do so. He further submitted that the Lower Appellate Court found that the petitioner is liable to pay the first respondent a sum of Rs.3,00,000/- on the date of cheque and the petitioner admitting his signature in the cheque/Ex.P2, hence presumption was drawn against the petitioner and in favour of the first respondent. Hence, prayed for dismissal.



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4.Considering the submissions made and on perusal of the materials, it is seen that the petitioner suffered two concurrent findings. Though the petitioner attempted to take a stand that he had borrowed only Rs.1,00,000/- from the first respondent and repaid the same, this statement is not supported with any materials. The evidences of DW1 and D2 does not the support the contention of the petitioner. The Trial Court as well as the Lower Appellate Court had rightly held that the petitioner not denied his signature and issuance of cheque but takes a different stand as regards the liability which he could not probalilize. In view of the above, this Court finds no reason to interfere with the conviction and sentence imposed against the petitioner by the Lower Appellate Court.

5.Accordingly, the criminal revision petition stands dismissed and the conviction imposed by the learned III Additional Sessions Judge, Puducherry in C.A.No.10 of 2020 dated 22.01.2021 by sentencing the petitioner to undergo six months simple imprisonment and to pay a sum of Rs.3,00,000/- as compensation, in default to undergo three months simple imprisonment



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and fine of Rs.5,000/- is hereby confirmed. The first respondent to apply for conviction warrant before the Court below and submit the same to the jurisdictional Police, who shall secure the petitioner.

22.08.2024

Index:Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No
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To

- 1.The Public Prosecutor,
Pondicherry.
- 2.The Judicial Magistrate No.II,
Puducherry.
- 3.The III Additional Sessions Judge,
Puducherry.



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M.NIRMAL KUMAR, J.

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