



CrI. Rc. No. 425 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 31.07.2023

Delivered On : 02.08.2024

Coram

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI. Rc. No. 425 of 2019

U.Raja

.. Petitioner/Appellant/Accused

Vs.

C.Vanaja

.. Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 & 401 Cr.P.C to set aside the conviction imposed in the Judgment dated 09.02.2017 made in STC.No.1161 of 2013 on the file of the learned Judicial Magistrate No.I, Mannargudi and the same was modified by Judgment dated 15.03.2019 made in C.A.No.12 of 2017 on the file of the learned Additional Sessions Judge, (Fast Track Mahila Court), Thiruvavarur.

For Petitioner	..	Mr.K.Jayaraman
For Respondent	..	Mr.K.Ethirajalu
		Legal Aid Counsel



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JUDGMENT

This Criminal Revision has been filed to to set aside the conviction imposed in the Judgment dated 09.02.2017 made in STC.No.1161 of 2013 on the file of the Judicial Magistrate No.I, Mannargudi and the same was modified by Judgment dated 15.03.2019 made in C.A.No.12 of 2017 on the file of the learned Additional Sessions Judge, (Fast Track Mahila Court), Thiruvarur.

2. The Learned Counsel for the Revision Petitioner submitted that the Revision Petitioner is the Accused before the learned Judicial Magistrate No.1, Mannargudi, in S.T.C.No.1161 of 2013 dated 09.02.2017.

3. Aggrieved by the concurrent finding of the learned Judicial Magistrate No.1, Mannargudi and the learned Additional Sessions Judge, (Fast Track Mahila Court) Tiruvarur, the Accused had filed this Revision case seeking to set aside the conviction stating that the learned Additional Sessions Judge had convicted the Accused when the Complainant had not



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proved the liability and had set aside the Order of compensation. The Appellate Court failed to consider that the Complainant had not proved the extent of liability and hence the conviction under Section 138 of Negotiable Instruments Act ought to have been set aside. The Appellate Court as well as the trial Court had on the basis of surmises and presumption, convicted the Accused. Therefore, the Accused as Revision Petitioner seeks to set aside the finding of the learned Judicial Magistrate-I, Mannargudi in STC.No.1161 of 2013 dated 09.02.2017 and the conviction as modified by the Judgment of the learned Additional Sessions Judge, (Fast Track Mahila Court), Tiruvarur in modifying the Judgment of the learned Judicial Magistrate – I, Mannargudi in STC.No.1161 of 2013 by Judgment dated 15.03.2019 in C.A.No.12 of 2017 on the file of the learned Additional Sessions Judge (Fast Track Mahila Court), Tiruvarur.

4. A private complaint was filed by the Respondent/Complainant before the learned Judicial Magistrate No.1, Mannargudi, based on the cheque issued by the Accused. The Complainant had presented the cheque,

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which was returned with the endorsement “Insufficient funds” on 25.02.2013, for which notice was issued by the Respondent/Complainant.

On receipt of the notice, the Revision Petitioner herein had sent reply disputing the prior liability. Only after reply notice, the Respondent/Complainant proceeded with the complaint. After taking the complaint, summons was issued, the Accused appeared and contested the complaint. After recording the evidence and hearing the arguments, the learned Judicial Magistrate No.1, Mannargudi, by judgment dated 09.02.2017 in S.T.C.No.1161 of 2013 had convicted the Accused for the offence under Section 138 of the Negotiable Instruments Act, 1881, and sentenced him to undergo imprisonment for two years and compensation of Rs.7,50,000/- was awarded.

5. Aggrieved by the same, the Accused/Revision Petitioner herein had preferred Ctrl.A.No.12 of 2017 on the file of the learned Additional Sessions Judge (Fast Track Mahila Court), Thiruvarur.



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6. After hearing the arguments of both parties, the learned Additional Sessions Judge (Fast Track Mahila Court), Thiruvarur, by judgment dated 15.03.2019 had partly allowed the Appeal, thereby reduced the imprisonment of two years awarded by the learned Judicial Magistrate No.1, Mannargudi, to 11 months of imprisonment and modified the compensation amount.

7. Aggrieved by the judgment of the learned Additional Sessions Judge (Fast Track Mahila Court), Thiruvarur, the Accused before the learned Judicial Magistrate No.1, Mannargudi, in S.T.C.No.1161 of 2013, who is the Appellant before the learned Additional Sessions Judge (Fast Track Mahila Court), Thiruvarur, in Crl.A.No.12 of 2017 had filed this Criminal Revision Case raising the ground that the learned Additional Sessions Judge (Fast Track Mahila Court), Thiruvarur, failed to appreciate the grounds of Appeal raised by the Accused/Appellant. The learned Counsel for the Revision Petitioner contended that the learned Judicial Magistrate No.1, Mannargudi, failed to appreciate the evidence properly and had delivered a judgment

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based on surmises and conjectures and based on presumption available under Section 138 of the Negotiable Instruments Act, 1881. Therefore, the judgment of the learned Judicial Magistrate No.1, Mannargudi, in S.T.C.No.1161 of 2013 dated 09.02.2017 modified in the Appeal by the learned Additional Sessions Judge (Fast Track Mahila Court), Thiruvarur, in Crl.A.No.12 of 2017 dated 15.03.2019 are not proper. When the Complainant fails to prove the prior liability, the entire case has to be rejected. The learned Additional Sessions Judge (Fast Track Mahila Court), Thiruvarur, instead of modifying the sentence of imprisonment, ought to have allowed the Appeal and set aside the conviction and sentence of imprisonment. Therefore, the learned Counsel for the Revision Petitioner seeks to set aside the judgment of conviction of sentence of imprisonment ordered by the learned Judicial Magistrate No.1, Mannargudi, which was modified in Crl.A.No.12 of 2017.

8. In support of his contention, the learned Counsel for the Revision Petitioner relied on the reported ruling of the Hon'ble Supreme Court in the

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case of ***Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel***
and another in Criminal Appeal No.1497 of 2022 dated 11.10.2022. The

relevant portion reads as follows:

“30. In view of the discussion above, we summarise our findings below:

(i) For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation;

(ii) If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque;

(iii) When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted;

(iv) The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the ‘legally enforceable debt’ on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds; and



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(v) The notice demanding the payment of the 'said amount of money' has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the validity of the form of the notice need not be decided."

9. The learned Counsel for the Respondent submitted that the Respondent is the Complainant. The Revision Petitioner had obtained loan for a sum of Rs.7,00,000/-. Towards repayment of the loan, he had issued the cheque. When the cheque was presented for encashment, it was returned for "insufficient funds". Therefore, statutory notice was issued to the Accused, the Accused received the notice, but he did not reply. Therefore, the Complaint was filed in STC.No.1161/2013. The Complainant examined himself as P.W-1 and after evidence of the Complainant side was closed, the Accused was examined under 313 Cr.P.C. He denied the incriminating evidence against him. After the proceedings under Section 313 Cr.P.C., the Accused had to let in evidence as rebuttal evidence. Instead he had not entered witness box, he had examined D.W-1 to D.W-3. Therefore, it shall



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not be treated as rebuttal evidence. As per the proceedings under 138 of Negotiable Instruments Act, the learned Judicial Magistrate had rightly rejected the evidence of D.W-1 to D.W-3 and convicted the Accused for the offence under Section 138 of Negotiable Instruments Act imposing two years Rigorous Imprisonment and pay compensation of Rs.7,00,000/- (cheque amount) along with Rs.50,000/- towards the cost in STC.No.1161/2013. When the Accused filed Criminal Appeal No.12/2017, the learned Appellate Judge had modified the period of imprisonment as 11 months and set aside the compensation.

10. It is the submission of the learned Counsel for the Respondent that the Judgment given by the learned Appellate Judge is not as per the Provision of 138 Negotiable Instruments Act as amended in 2002 and came into force on 06.02.2003. Therefore, the Revision filed by the learned Counsel for the Revision Petitioner is to be dismissed and the Judgment of the trial Court is to be restored. Further, it is the submission of the learned Counsel for the Respondent that till date, the Accused had not deposited any

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amount before the trial Court. The Complainant was aged about 58 years on the date of filing of the Complaint.

11. This Court had called for remarks from the learned Judicial Magistrate, Fast Track Court regarding whether any amount deposited before the learned Judicial Magistrate – I, Mannargudi in STC.No.1161 of 2013 on the date of filing of this Criminal Revision Case.

12. As per the letter received from the learned Judicial Magistrate – I, Fast Track Court, Mannargudi, no amount had been deposited by the Accused in STC.No.1161 of 2013.

13. On perusal of the Judgment of the learned Judicial Magistrate in STC.No.1161 of 2013, it is found that the learned Judicial Magistrate-I, Mannargudi had discussed the evidence in Paragraph Nos.12 to 15 and arrived at a conclusion based on the logical deduction on assessment of evidence. Thereby arrived at a finding that the Complainant had proved the

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case against the Accused and had convicted the Accused for the offence under Section 138 of Negotiable Instruments Act thereby imposing a sentence of two years imprisonment and imposing a compensation of Rs.7,50,000/-.

Point for consideration:

Whether the Judgment dated 09.02.2017 made in STC.No.1161 of 2013 on the file of the learned Judicial Magistrate No.I, Mannargudi and the same was modified by Judgment dated 15.03.2019 made in C.A.No.12 of 2017 on the file of the learned Additional Sessions Judge, (Fast Track Mahila Court), Thiruvavarur are to be set aside as perverse?

14. As Revisional Court, this Court shall exercise its discretion only regarding the grounds raised in the revision regarding technicalities of law.

15. It is the contention of the learned Counsel for the Revision Petitioner that the Appellant before the learned Additional Sessions Judge,(Fast Track Mahila Court) Tiruvarur and the Accused before the learned Judicial Magistrate-1, Mannargudi that the finding of both the Courts are based on surmises and presumption.

16. On consideration of the Judgment of the learned Judicial

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Magistrate-I, Mannargudi, it is found that the learned Judicial Magistrate-I, Mannargudi had discussed the evidence of the complainant and the evidence on behalf of the Accused through the Defence Witnesses viz., D.W-1 to D.W-3. The learned Judicial Magistrate-I, Mannargudi had on assessment of evidence had arrived at a logical deduction that the Complainant had proved the case as per Section 138, 139 and 118 of the Negotiable Instruments Act. Further, the learned Judicial Magistrate – I, Mannargudi had observed that the Accused had not discharged the burden as per Section 118 of the Negotiable Instruments Act regarding rebuttal evidence. Therefore, rejected evidence of D.W-1 to D.W-3. In the light of the facts and circumstances of the case as gathered from the records, the learned Judicial Magistrate-I, Mannargudi had arrived at a conclusion that the Complainant under Section 138 of Negotiable Instruments Act had proved the case through cogent evidence and in conclusion, the learned Judicial Magistrate-I, Mannargudi had convicted the Accused for the offence under Section 138 of Negotiable Instruments Act imposing sentence of two years of imprisonment and compensation of 7,50,000/- to the Complainant. The learned Judicial

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Magistrate-I had also discussed the facts that the Accused even though received the notice from the Complainant before lodging the Complaint, seeking the Accused to pay the amount for the cheque that had been returned from the Bank for “insufficient funds”. After having received the statutory notice, the Accused had not replied. If the Accused had replied stating that he had borrowed only Rs.1,30,000/-; he had paid Rs.30,000/-; and balance amount is only Rs.1,00,000/-. The defence of the Accused could have been accepted by the learned Judicial Magistrate-I, Mannargudi. The Accused in this case had not replied. He remained silent. Therefore, the presumption available to the Court is against the Accused. Again, the defence of the Accused is that at the time of borrowal of the amount, he had issued a blank cheque duly signed by him which was subsequently filled up by the Complainant for amount of Rs.7,00,000/-. Even though he had borrowed only Rs.1,30,000/-; and had repaid Rs.30,000/-; and his debt towards the Complainant was only Rs.1,00,000/-. The Complainant had filled it up with huge amount of Rs.7,00,000/-. If that is the defence of the Accused, he ought to have examined himself as D.W-1. He had evaded and avoided the

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witness box. He had utilised the services of his acquaintances as D.W-1 to D.W-3. They had in their depositions given different versions regarding borrowal and repayment. Therefore, the learned Judicial Magistrate-I, Mannargudi had rejected their evidence. Also, regarding the defence of the Accused, the Revision Petitioner herein that he had given only a blank cheque duly signed. It was filled up by the Complainant. The learned Judicial Magistrate had placed reliance on the paragraph 14 of the Judgment and justified the alleged conduct of the Complainant to fill up the cheque. The Negotiable Instrument grants a person with whom the cheque was given custody to fill it up. Therefore, the same cannot be faulted. The defence of the Accused was rejected as not proved, thereby the Judgment of conviction recorded by the learned Judicial Magistrate against the Accused imposing sentence of two years of imprisonment and compensation of Rs.7,50,000/-.

17. When the Accused had preferred the Revision, he had raised the very same grounds before the learned Additional Sessions Judge, (Fast Track Mahila Court), Tiruvarur that the Complainant had not proved prior liability.

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The cheque was duly signed and blank cheque issued by the Accused was filled up by the Complainant. The learned Additional Sessions Judge on re-appreciation of evidence in Paragraph Nos.6 to 31 of the Judgment, the learned Additional Sessions Judge had concluded that the Accused failed to prove his defence. Still, the learned Sessions Judge without any proper reasoning modified the sentence of imprisonment thereby reduced the 2 years Rigorous Imprisonment to 11 months and set aside the amount Rs.7,50,000/- as compensation, without any acceptable reasoning is found erroneous. That cannot be a ground to set aside the conviction. As far as appreciation of evidence, the learned Additional Sessions Judge, Tiruvarur had confirmed the finding. Without any basis, he had set aside the compensation amount. The Revision had been filed by the Accused seeking to set aside the conviction that is found not acceptable by exercising the discretion under the Provisions for Revision. The Revisional Court is not expected to re-appreciate the evidence. Only on technicalities of law, this Court can exercise discretion. The points raised by the Accused as Revision Petitioner is found unacceptable. Here, is a case where the Complainant

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ought to have come before this Court seeking to set aside the Judgment of the Appellate Court. The Complainant had not approached this Court. The Accused himself approached this Court seeking to set aside the Judgment of both the trial Court as well as the Appellate Court. When the Court had on re-appreciation of evidence arrived at a conclusion that the conviction by the learned Judicial Magistrate is confirmed. He ought not to have modified the sentence. The order of the learned Appellate Judge in setting aside the amount of compensation is found unacceptable when he had arrived at a conclusion that on proper appreciation of evidence, the learned Judicial Magistrate-I, Mannargudi had convicted the Accused. Based on the amount found in the cheque, when the Negotiable Instruments Act grants the payee in due course to fill up the instrument. The drawer of the cheque cannot claim that he is not liable when he had granted the blank cheque. The presumption is always in favour of the payee in due course. The Accused had not rebutted the evidence under section 118 of the Negotiable Instruments Act. He had not entered the witness box to rebut the evidence of the Complainant. The conduct of the Accused having received notice before

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lodging the Complaint by the Complainant and remaining silent gives a presumption that he accepts the liability. He had an opportunity to rebut the evidence of the Complainant under Section 118 of the Negotiable Instruments Act. He had not entered the witness box. Instead he had utilised the service of his acquaintances as D.W-1 to D.W-3. When the Accused was questioned under 313 Cr.P.C., he had not mentioned about the names of the witnesses. Therefore, the learned Judicial Magistrate as well as the learned Additional Sessions Judge rejected the defence of the Accused. The Judgment of the learned Sessions Judge modifying the sentence, thereby setting aside the compensation amount awarded by the learned Judicial Magistrate-I, Mannargudi and awarding lesser sentence of imprisonment is found unacceptable and unreasonable even though Accused had preferred this Criminal Revision Case seeking to set aside the finding of the learned Judicial Magistrate-1 and the learned Additional Sessions Judge. The Revision is to be dismissed.

18. The Judgment of the learned Additional Sessions Judge, Tiruvarur

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regarding modifying the sentence of imprisonment and modifying the award of compensation are set aside by invoking the powers of Revision. This Criminal Revision lacks merit and is to be dismissed.

19. The Judgment of the learned Additional Sessions Judge, Tiruvarur is not as per the Provisions of Section 138 of Negotiable Instruments Act. The learned Sessions Judge had confirmed the finding of guilt recorded by the learned Judicial Magistrate-I, Mannargudi but had modified the order of sentence of imprisonment by reducing the period from two years to 11 months. Also, the compensation and costs awarded by the learned Judicial Magistrate – I, Mannargudi was set aside without any acceptable reason and against the Provisions of Section 138 of Negotiable Instruments Act as amended. Therefore, the Judgment of conviction recorded by the learned Additional Sessions Judge is confirmed. The sentence modified by the learned Additional Sessions Judge is set aside as it is not as per the Provisions of Section 138 of Negotiable Instruments Act. The sentence of imprisonment and compensation awarded by the learned

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Judicial Magistrate-I, Mannargudi in STC.No.1161 of 2013 is restored.

In the result, this ***Criminal Revision is dismissed.*** The Accused is directed to pay the compensation amount of Rs.7,50,000/-. The Accused is directed to surrender before the learned Judicial Magistrate-I, Mannargudi within one month from the date of uploading of this Judgment on the website of this Court, failing which, the Complainant is directed to approach the learned Judicial Magistrate-I, Mannargudi by filing appropriate application. The learned Judicial Magistrate -I, Mannargudi is directed to execute the warrant and issue direction to the Police Officials concerned to secure the Accused and detain him in person to undergo two years of imprisonment. The Complainant is within his/her discretion to recover the amount by filing Execution Petition either before learned Judicial Magistrate or before the Civil Court concerned.

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Internet:Yes/No

Index:Yes/No

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Speaking/Non-speaking order

To

1. The Judicial Magistrate-I,
Mannargudi.
2. The Additional Sessions Judge,
Fast Track Mahila Court,
Tiruvavur.

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SATHI KUMAR SUKUMARA KURUP, J.,
dh

Judgment made in
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