



Crl.R.C.No.852 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.852 of 2020
and Crl.M.P.No.6039 of 2020

M.Jaganathan

... Petitioner / Accused

Vs.

R.Thanaraj
Complainant

... Respondent /

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the Judgment and orders dated 05.08.2020 in C.A.No.19/2019, passed by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam, confirming the Judgment and orders, dated 12.06.2019 in C.C.No.220/2004 passed by the learned Judicial Magistrate No.I, Gobichettipalayam.

For Petitioner : Mr.A.Kumanaraja

For Respondents : Mr.R.Prabakar



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ORDER

Challenging the Judgment and Orders, dated 05.08.2020 passed in C.A.No.19/2019 by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam, the present Criminal Revision is filed by the petitioner/Accused.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The brief case of the complainant in a nutshell is as follows :

- i. The accused borrowed a sum of Rs.3,00,000/- on the following dates:

<i>S.No.</i>	<i>Date</i>	<i>Amount borrowed</i>
	15.11.2002	Rs.1,75,000/-
	20.11.2002	Rs.75,000/-
	29.11.2002	Rs.50,000/-
Total		Rs.3,00,000/-



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- ii. In order to liquidate the debt, the accused issued a cheque bearing number.27015, dated 19.10.2003 (Ex.P1) drawn on ICICI Bank, Gobichettipalayam for Rs.3,00,000/-.
- iii. When the complainant presented the cheque for collection on 19.11.2003 through his bankers viz., the Bank of India, Lakkampatti Branch, the same was returned on 14.06.2016 for the reason “Account closed”, as is seen from the cheque Return memo (Ex.P2).
- iv. Therefore, the complainant issued a statutory notice dated 17.12.2003 (Ex.P4) to the accused calling upon the latter to pay the amount due under the cheque.
- v. The accused sent a reply notice (not marked) which, according to the complainant, contained false allegations.
- vi. Therefore, the complainant filed a private complaint before the Judicial Magistrate No.I, Gobichettipalayam, under Section 200 Cr.P.C. against the accused in C.C.No.220/2004 for an offence punishable under section 138 of the Negotiable Instruments Act (in



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short the N.I. Act)

- vii. The learned Judicial Magistrate took cognizance of the offence under Section 138 of the N.I. Act and issued summons to the accused under Section 204 Cr.P.C.
- viii. On the appearance of the accused, the copies of case records were furnished to him under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since the accused pleaded not guilty, the matter was posted for trial.
- ix. The complainant examined himself and marked Ex.P1 to Ex.P8.
- x. When the accused was questioned under Section 313(1)(b) of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him he denied of having committed any offence. The accused examined himself and two other witnesses and marked Ex.D1 to Ex.D10.
- xi. After full contest, the learned trial court judge, vide his Judgment dated 12.06.2019, convicted the accused for the offence punishable under Section 138 of the N.I. Act and sentenced him to undergo Simple imprisonment for a period of six months and to pay a sum



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of Rs.3,00,000/- as compensation to the complainant.

xii. Aggrieved over the same, the accused filed an appeal in C.A.No.19/2019 before the III Additional District and Sessions Judge, Erode at Gobichettipalayam.

xiii. The learned III Additional District and Sessions Judge, Erode at Gobichettipalayam after analysing the evidence on record, confirmed the findings recorded by the Trial Court Judge and dismissed the appeal, as against which the present Criminal Revision Case is filed by the accused.

4. Heard Mr.A.Kumanaraja, learned counsel for the Revision petitioner / accused and Mr.R.Prabakar, learned counsel for the Respondent / complainant.

5. At the outset it may be observed that the accused had not denied his signature on the cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 & 139 of Negotiable



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Instruments Act, unless the contrary is proved by the accused.

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6. Mr.A.Kumanaraja, learned counsel for the revision petitioner would contend that the conviction and sentence passed by both the Courts below are erroneous for the following reasons:

- i. The complainant had lent a huge sum of Rs.3,00,000/- to the revision petitioner even without obtaining any security.
- ii. In fact, the revision petitioner had lodged a complaint with the Inspector of Police, Kadathur Police Station, for loss of his Cheque (Ex.P1) even in the year 1999.
- iii. The bank official (D.W.3) had clearly deposed that the validity of the cheque is only up to the year 1999.

7. Per contra, Mr.R.Prabakar, learned counsel appearing for the Respondent would contend that both the Courts below after analysing the evidence on record in proper perspective, had convicted and sentenced the accused and there is no reason for this Court to interfere with the same.



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8. In the instant case, it is alleged by the revision petitioner that he lodged a complaint with the Inspector of Police, Kadathur Police Station on 14.09.1999 with regard to the alleged loss of cheque. A carbon copy of the complaint lodged with the Police has been marked as Ex.D6. However, the revision petitioner did not pursue the matter further though his specific allegation before the trial Court was that one Mr.Kandasamy, counsel for the complainant had stolen his cheque. According to him, Advocate Kandasamy and the complainant are co-brothers and since the accused and the complainant belong to different political parties, a false case has been foisted against him by pressing into service the stolen cheque. None of the above contentions were substantiated by the revision petitioner.

9. Moreover, when it is stated by the revision petitioner that the police did not take any action on the complaint given by him, he did not prefer a private complaint against Advocate Kandasamy under Section 200 Cr.P.C., before the concerned jurisdictional Magistrate Court. No



complaint was given against the Advocate in the Bar Council also.

10. As regards the validity of the cheque, it is pertinent to point out that the bank has not returned the cheque for the reason that it does not have 'validity' and on the contrary it was returned for the reason 'Account closed'. This was considered by both the Courts below. In fact, the appellate Court in its Judgment dated 05.08.2020 had observed thus:

12. It is the case of the accused that, D.W.3 Thiru.Senthilkumar has deposed that "மேற்படி காசோலையில் 19.10.2003 என்று எழுதப்பட்டுள்ளது. எங்கள் வங்கி விதியின்படி செல்லத்தக்கதல்ல". In the cross examination the very same witness has deposed that, "ஒரு வாடிக்கையாளர் காசோலை புத்தகத்தை பெற்றதற்கு 2 வருடங்களுக்கு பின்னீட்டு கூட அந்த காசோலையை பயன்படுத்தலாம்". So, the evidence of D.W.3. is in no way supported for the case of the accused. It is also observed by the learned trial Judge in her Judgment"

11. Both the Courts below had analysed the oral and documentary evidence in the right perspective and by no stretch of imagination, the same can be termed as perverse. It is appropriate to note



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that this Court while exercising its revisional jurisdiction under Section 397 Cr.P.C cannot act as a second appellate court and thus cannot interfere with the concurrent findings recorded by both the courts below.

12. In the result,

- i. the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.
- ii. The Judgment and orders, dated 05.08.2020 in C.A.No.19/2019, passed by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam and the Judgment and orders, dated 12.06.2019 in C.C.No.220/2004 passed by the learned Judicial Magistrate No.I, Gobichettipalayam, are confirmed.
- iii. The Revision Petitioner / accused is directed to surrender before the trial Court viz., the Judicial Magistrate No.I, Gobichettipalayam, within fifteen days from the date of receipt of a copy of this order /



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uploading of the order, failing which, the trial Court shall take necessary steps to secure the presence of the accused to serve the remaining period of sentence.

29.04.2024

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
vum

To

- 1.The III Additional District and Sessions Judge,
Erode at Gobichettipalayam.
- 2.The Judicial Magistrate No.I,
Gobichettipalayam.



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R. HEMALATHA, J.

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