



Crl.R.C.No.916 of 2020
and Crl.M.P.Nos.6415 to 6417 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.R.C.No.916 of 2020
and Crl.M.P.Nos.6415 to 6417 of 2020

Ravikumar

... Petitioner

Vs.

Manimalar Investments,
Managing Partner,
Ka.Subbarayan,
S/o.Kaligounder,
No.40B, D1, Alagu Nagar,
Senthamanagalam Road,
Namakkal Town, Namakkal.

... Respondent

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the judgment passed by the Principal District Sessions Judge, Namakkal in C.A.No.87/2019 dated 14.09.2020 dismissing the appeal and confirming the judgment dated 14.11.2019 in C.C.No.304/2016 passed by the Judicial Magistrate No.1, Namakkal.

For Petitioner : Mr.R.Nalliappan

For Respondent : Mr.T.Muruganantham

ORDER

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Challenge in this criminal revision case is made to the judgement and orders passed by the Principal District Sessions Court, Namakkal in C.A.No.87/2019 dated 14.09.2020 in and by which the conviction and sentence passed by the Judicial Magistrate No.1, Namakkal in C.C.No.304/2016, was confirmed.

2.The case of the respondent / complainant is that the revision petitioner/accused borrowed a sum of Rs.50,000/- from him and also executed a promissory note (Ex.P1) promising to repay the principal together with interest @ 24% per annum. Though the accused had paid the interest for the period upto 13.05.2015, subsequently did not pay any amount. However, on much persuasion the accused issued a cheque bearing No.000081 dated 10.06.2016 (Ex.P2) for a sum of Rs.63,000/- drawn on Bank of Baroda, Namakkal Branch in favour of the complainant. When the complainant presented the cheque for collection on 18.06.2016 through his banker, viz., Namakkal Co-operative Union Bank Limited, Namakkal Branch, the same was returned for the reason 'Insufficient Funds' on the same date as is seen from the cheque Return



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Memo (Ex.P3). Therefore, the complainant issued a statutory notice dated 15.07.2016 (Ex.P4) to the accused demanding the latter to pay the amount due under the cheque. Though the said statutory notice was served on the accused on 16.07.2016 as is seen from the postal acknowledgement card (Ex.P5), he did not come forward to make good the payment. He did not also send any reply to the complainant.

3.The complainant, therefore, filed a private complaint before the learned Judicial Magistrate No.1, Namakkal under Section 200 Cr.P.C. against the respondent/accused for an offence punishable under Section 138 of the Negotiable Instruments Act (N.I. Act) in C.C.No.304/2016. The learned Judicial Magistrate No.1, Namakkal took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. Act) and issued summons to the accused/respondent and on his appearance, furnished copies of records under Section 207 Cr.P.C. When the respondent/accused was questioned with regard to the substance of accusation made against him, he pleaded not guilty and the case was therefore posted for trial.



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4.The complainant examined himself as PW.1 and marked Ex.P1 to Ex.P7. When the accused was questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, the accused denied of having committed any offence. However, the accused did not adduce any oral / documentary evidence on his side.

5.After analysing the evidence on record, the learned trial court judge found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act, convicted and sentenced him as detailed hereunder.

<i>S.No.</i>	<i>Offences under which convicted</i>	<i>Sentence</i>
1	Section 138 of N.I. Act	Simple imprisonment for six months and to pay a sum of Rs.1,26,000/- as compensation to the complainant u/s.357(3) Cr.P.C., in default to undergo simple imprisonment for one month.

6.Aggrieved over the same, the accused filed an appeal in Crl.A.No.87/2019 before the Principal District Sessions Court,



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Namakkal. The learned Principal District Sessions Judge, Namakkal, 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 is filed by the accused.

7. Mr.R.Nalliappan, learned counsel for the revision petitioner contended that the complainant's wife Palaniammal filed an Arbitration Original Petition in Arb.O.P.No.1/2019 wherein the present revision petitioner/accused was directed to pay a sum of Rs.3,00,000/- with interest to the complainant for the amount borrowed by him on 10.04.2016. According to him, the present cheque was issued as a security for the loan amount obtained by him on 10.04.2016 and this aspect was not at all considered by both the Courts below.

8. It is pertinent to point out that the accused had not denied his signature on the cheque. The transaction in the present case took place on 13.04.2015 and the accused had handed over the cheque (Ex.P2) on 10.06.2016 to the complainant. The transaction mentioned in Arbitration



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O.P.No.1/2019 is with regard to the loan obtained by the accused on 10.04.2016. Thus the transactions are totally different and no evidence was adduced by the accused to conclude that the present cheque was issued only as a security for the loan obtained by him on 10.04.2016 from the wife of the complainant.

9. Moreover, once the signature is admitted, there is a presumption under Sections 118 & 139 of N.I. Act unless the contrary is proved by the accused. The presumption under Sections 118 & 139 of N.I. Act, includes existence of a legally enforceable debt or liability. It is pertinent to point out the accused though received the statutory notice from the complainant did not send any reply. In fact, both the Courts below had appreciated the oral and documentary evidence adduced on both sides in the right perspective and by no stretch of imagination, the same can be termed as perverse. The accused did not file a copy of the order passed in Arbitration O.P.No.1/2019 before the appellate court though the judgment in Crl.A.No.87/2019 was passed only on 14.09.2020. In the circumstances, I do not find any reason to interfere



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with the concurrent findings recorded by both the Courts below.

10. In the result, this Criminal Revision Case is dismissed. No costs.

- i. The judgment dated 14.09.2020 passed in C.A.No.87/2019 by the Principal District Sessions Judge, Namakkal and the judgment dated 14.11.2019 passed in C.C.No.304/2016 by the Judicial Magistrate No.1, Namakkal, are confirmed.
- ii. The revision petitioner/accused shall surrender before the Judicial Magistrate No.1, Namakkal, within 15 days from the date of receipt of a copy of this order/uploading of the order, failing which, the Trial Court shall take steps to secure his presence for serving the remaining period of sentence.

01.04.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

R. HEMALATHA, J.

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To

- 1.The Principal District Sessions Judge, Namakkal.
- 2.The Judicial Magistrate No.1, Namakkal.

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