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Crl.R.C.No.941 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

CORAM

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

Crl.R.C.No.941 of 2020 and
Crl.M.P.Nos.6524, 6526 & 6527 of 2020

M.P.Srinivasan

... Petitioner / Accused

Vs.

Devaraj
Complainant

... Respondent /

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the Judgment, dated 13.07.2020 in C.A.No.403/2017 passed by the IV Additional District and Sessions Judge, Coimbatore, confirming the Judgment, dated 03.11.2017 in C.C.No.199/2011 passed by the Judicial Magistrate, Fast Track Court No.I @ Magisterial Level, Coimbatore.

For Petitioner : Mr.A.Suresh Sakthi Murugan

For Respondent : Mr.P.Tamilavel



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ORDER

Challenging the Judgment and Orders, dated 13.07.2020 passed in C.A.No.403/2017 by the learned IV Additional District and Sessions Judge, Coimbatore, 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 case of the complainant in a nutshell is as follows :

- i. The complainant and the accused are family friends. The accused borrowed a sum of Rs.7,50,000/- from the complainant on 27.04.2007 and promised to repay the same within three months with interest @ 24% per annum. On the same day, he issued two post dated cheques (Ex.P2 and Ex.P3) bearing numbers 009839 and 009840, dated 16.08.2007 and 03.10.2007 for Rs.4,00,000/- and 3,50,000/- respectively, drawn on Union Bank of India, R.S.Puram Branch, Coimbatore, to the complainant.



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- ii. When the complainant presented the said cheques for collection on 30.11.2007 through his bankers viz., Indian Overseas Bank, Gandhipuram Branch, Coimbatore, the same were returned on 01.12.2007 for the reason “Insufficient Funds”, as is seen from the cheque Return memos (Ex.P4 and Ex.P5).
- iii. Therefore, the complainant issued a statutory notice dated 11.12.2007 (Ex.P7) to the accused calling upon him to pay the amount due under the cheques.
- iv. The accused sent a reply notice on 03.01.2008 (Ex.P8) which according to the complainant contained false allegations.
- v. Therefore, the complainant filed a private complaint against the accused under Section 200 Cr.P.C. before the Judicial Magistrate, Fast Track Court No.I @ Magisterial Level, Coimbatore in C.C.No.199/2011 for an offence punishable under section 138 of the Negotiable Instruments Act.
- vi. The learned Judicial Magistrate, took cognizance of the offence under Section 138 of the Negotiable Instruments Act and issued summons to the accused under Section 204 Cr.P.C.



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- vii. On appearance of the accused, the copies of 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 case was posted for trial.
- viii. On the side of the complainant, the complainant examined himself as P.W.1 and two other witnesses and marked Ex.P1 to Ex.P12.
- ix. When the accused was questioned under Section 313(1)(b) 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 one another witness and marked Ex.D1 and Ex.D2.
- x. After full contest, the learned Judicial Magistrate, vide his judgment dated 03.11.2017 convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo Simple imprisonment for six months and to pay a fine of Rs.7,50,000/-, in default, to undergo simple imprisonment for two months.



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xi. Aggrieved over the same, the accused filed an appeal in C.A.No.403/2017 before the IV Additional District and Sessions Judge, Coimbatore.

xii. The learned IV Additional District and Sessions Judge, Coimbatore, after analysing the evidence on record, confirmed the findings recorded by the trial Court and dismissed the appeal, as against which, the present Criminal Revision Case is filed by the accused.

4. Heard Mr.A.Suresh Sakthi Murugan, learned counsel for the Revision petitioner and Mr.P.Tamilavel, learned counsel for the Respondent.

5. At the outset it may be observed that the accused did not deny his signature on the cheques (Ex.P2 and Ex.P3). 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.



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6. Mr.A.Suresh Sakthi Murugan, learned Counsel for the revision petitioner would contend that the complainant did not file any income tax particulars to show that he lent a sum of Rs.7,50,000/- to the revision petitioner and therefore, the conviction and sentence passed by both the Courts below are erroneous.

7. Mr.P.Tamilavel, learned counsel appearing for the Respondent relied on the decision of the Hon'ble Supreme Court in ***Crl.A.Nos.230-231 of 2019 (@ Spl (CRL) Nos.9334-35 of 2018 in Bir Singh Vrs. Mukesh Kumar*** wherein it has been observed thus:

"16. The short question before us is whether the High Court was right in reversing the concurrent factual findings of the Trial Court and of the Appellate Court in exercise of its revisional jurisdiction. The questions of law which rise in this appeal are (i) whether the revisional Court can, in exercise of its discretionary jurisdiction, interfere with an order of conviction in the absence of any jurisdictional error or error of law and (ii) whether the payee of a cheque is disentitled to the benefit of the



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presumption under Section 139 of this Negotiable Instruments Act, of a cheque duly drawn, having been issued in discharge of a debt or other liability, only because he is in a fiduciary relationship with the person who has drawn the cheque."

8. His contention is that the revision petitioner has not rebutted the presumption under Sections 118 and 139 of the Negotiable Instruments Act and both the Courts below also concurrently held that the revision petitioner is guilty of the offence under Section 138 of the Negotiable Instruments Act. Therefore, there is no ground for this Court to reverse the findings.

9. In the instant case, the evidence of the complainant (P.W.1) clearly shows that he was in Government service and retired on attaining superannuation on 30.06.2005. His specific contention was that he lent a sum of Rs.7,50,000/- to the revision petitioner from out of his terminal benefits.



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10. The accused though in his reply notice (Ex.P8), had stated that he borrowed only a sum of Rs.3,00,000/- as a hand loan from the complainant and repaid the same by way of executing a Power of Attorney in the name of one Rajendran who is closely related to the complainant and had requested the complainant to return the cheques back to him, the complainant did not return the cheques to him. However, it is not known as to why the revision petitioner did not lodge any complaint against the respondent/complainant, for not returning the cheques even after receipt of the statutory notice (Ex.P7) by him. There is no explanation in this regard.

11. It is also pertinent to point out that the revision petitioner had deposed that he borrowed a sum of Rs.1,50,000/- from the complainant during the year 2007. However, in his reply notice, he has stated that he borrowed a sum of Rs.3,00,000/- during 1993-1994 and repaid the same. The trial court in fact pointed out this glaring



contradiction and observed thus:

"On the contrary in Ex.P8, the accused averred in Para No.3 that being a building contractor the accused borrowed a sum of Rs.3,00,000/- as a hand loan for his business needs in the year 1993 - 1994. During the transactions, the Accused issued two blank cheques 009839, 009840 with only signature to the complainant as security only. However, the Accused deposed in his cross examination that he does not know about the cheque numbers. Further the D.W.1 admitted that though he issued the Ex.P8 to the Accused and he is the witness of Ex.D1 documents, he does not know about the money transactions between the parties directly and he purely issued the reply only on the instructions given by the client. On perusal of records it reveals that the accused admitted in Ex.P8 that the cheques in question were issued for the money transactions happened in the year 1993-1994 for Rs.3,00,000/-, but deposed that he borrowed amount in the year 2007 for Rs.1,50,000/-. It shows various contradictions in the evidence deposed by the accused from the documents led by the accused. It is well settled position of the law that the Accused can raise any number of objections but at the same time, it should not



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contrary with one another. Even though, the cheque in question is issued in blank S.20 of NI Act gives prima facie authority to the holder of the cheque to fill and encash the same. Hence, this Court comes to the conclusion that the defence raised by the accused is not at all probablise his case and it will not rebut the presumption available in the favour of the complainant."

12. A perusal of the evidence on record shows that the complainant had proved his case by way of adducing acceptable evidence and on the contrary the revision petitioner has not rebutted the presumption under Sections 118 and 139 of the Negotiable Instruments Act. 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.

13. In the result,

- i. the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed.
- ii. the Judgment dated 13.07.2020 in C.A.No.403/2017 passed by



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the IV Additional District and Sessions Judge, Coimbatore and the Judgment dated 03.11.2017 in C.C.No.199/2011 passed by the Judicial Magistrate, Fast Track Court No.I @ Magisterial Level, Coimbatore, are confirmed.

iii. The Revision Petitioner / accused is directed to surrender before the trial Court viz., the Judicial Magistrate, Fast Track Court No.I @ Magisterial Level, Coimbatore, within fifteen days from the date of receipt of a copy of this order / 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.

15.04.2024

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
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R. HEMALATHA, J.

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To

- 1.The IV Additional District and Sessions Judge,
Coimbatore.
- 2.The Judicial Magistrate,
Fast Track Court at Magisterial Level - I,
Coimbatore.

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