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Crl.R.C.No.1166 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2024

CORAM

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

Crl.R.C.No.1166 of 2020 and
Crl.M.P.Nos.8141 and 8144 of 2020

K.Venkatesan

... Petitioner / Accused

Vs.

G.Srinivasan
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 21.07.2020 passed by the I Additional District and Sessions Judge, Salem in C.A.No.43 of 2019, confirming the Judgment and orders dated 06.02.2019 passed by the Judicial Magistrate II, Salem in C.C.No.73/2013.

For Petitioner : Mr.V.Sekar

For Respondent : Mr.P.Sonu

ORDER

Challenging the Judgment and Orders, dated 21.07.2020 passed in C.A.No.43 of 2019 by the learned I Additional District and Sessions Judge, Salem, confirming the conviction and sentence passed by the learned Judicial Magistrate II, Salem, dated 06.02.2019 in



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C.C.No.73/2013, the present Criminal Revision Case 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.1,60,000/- from the complainant on 27.10.2012 and issued a post dated cheque bearing number 479221 dated 18.12.2012 (Ex.P1) drawn on Canara Bank, Suramangalam branch, for a sum of Rs.1,60,000/-.
- ii. When the complainant presented the said cheque for collection on 18.12.2012 through his banker viz., Canara Bank, Suramangalam branch, the same was returned on 19.12.2012 for the reason “Funds Insufficient”, as is seen from the cheque return memo (Ex.P2).
- iii. Therefore, the complainant issued a statutory notice dated 20.12.2012 (Ex.P3) to the accused calling upon him to pay the amount due under the cheque.



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- iv. Since the accused refused to receive the statutory notice, it was returned on 29.12.2012, as is evidenced by the Returned cover (Ex.P4).
- v. Therefore, the complainant filed a private complaint against the accused under Section 200 Cr.P.C. before the Judicial Magistrate II, Salem in C.C.No.73/2013.
- 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.
- vii. On the appearance of the accused, the copies of the 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 case was posted for trial;
- viii. On the side of the complainant, the complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P4.
- 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.



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The accused examined two witnesses and marked Ex.D1.

- x. After full contest, the learned trial court judge, vide his judgment dated 06.02.2019, convicted the accused for an 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.1,60,000/- within two months from the date of the order.
- xi. Aggrieved over the same, the revision petitioner / accused filed an appeal in C.A.No.43 of 2019 before the I Additional District and Sessions Judge, Salem.
- xii. The learned I Additional District and Sessions Judge, Salem, after analysing the evidence on record, confirmed the findings of the trial court and dismissed the appeal, as against which, the present Criminal Revision Case is filed by the accused.

4. Heard Mr.V.Sekar, learned counsel for the Revision petitioner and Mr.P.Sonu, learned counsel for the Respondent.

5. At the outset it may be observed that the accused did not



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deny his signature on the cheque (Ex.P1). 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. In the instant case, the accused did not send any reply notice to the complainant though he was in know of the statutory notice dated 20.12.2012 (Ex.P3) issued by the complainant. Though it is contended by the accused that the cheque was issued in the Police Station under coercion, the same has not been substantiated by adducing acceptable evidence. Both the Courts below after analysing the evidence on record, had concluded that the accused is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and all the observations made by both the Courts below are perfectly in order. Therefore I do not see any reason to interfere with the same.

6. Mr.V.Sekar, learned Counsel for the revision petitioner / accused would contend that during the pendency of the present Criminal Revision Case, the accused entered into a compromise with the complainant and deposited a sum of Rs.80,000/- to the credit of the trial Court and subsequently paid another sum of Rs.80,000/- by way of Demand Draft. Though the complainant initially accepted the Terms of



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Compromise, subsequently started demanding money in excess of the amount agreed to be paid by the accused, on account of which, the compromise memo was not recorded by this Court.

7. The learned counsel for the Revision petitioner relied on the decision of the Hon'ble Supreme Court in ***Damodar S.Prabhu Vrs. Sayed Babalal H.*** reported in ***(2010) 5 Supreme Court Cases 663*** wherein the Hon'ble Supreme Court has given the following guidelines while dealing with the revision or appeal:

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the writ of summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the Court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a



subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount."

8. It is seen from the records that the accused had committed an offence punishable under Section 138 of the Negotiable Instruments Act. Hence, both the Courts below had sentenced the accused to undergo Simple Imprisonment for a period of six months and directed him to deposit a sum of Rs.1,60,000/- under Section 357 Cr.P.C. As stated by the learned counsel for the revision petitioner, the accused has already deposited a sum of Rs.80,000/- on 18.01.2021 to the credit of the Judicial Magistrate II, Salem and subsequently, on 19.03.2024, paid a sum of



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Rs.80,000/-. Totally, the accused has paid Rs.1,60,000/- as directed by the Courts below. The learned counsel for the respondent in all his fairness conceded this fact.

9. While the conviction of the revision petitioner for the offence under Section 138 of the Negotiable Instruments Act is confirmed, the sentence is modified as under:

- i. The accused is directed to pay 15% of the Cheque amount of 1,60,000/-, to the complainant, within a period of three weeks from the date of receipt of a copy of this order, in default, to undergo Simple Imprisonment for a period of two weeks.'
- ii. The Criminal Revision Case is partly allowed and consequently, connected miscellaneous petitions are closed.

12.04.2024

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

1.The I Additional District and Sessions Judge, Salem.

2.The Judicial Magistrate II, Salem.

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