



Crl.R.C.No.1141 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.1141 of 2020

Vincent

... Petitioner / Accused

Vs.

R.Venkatesan
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 25.10.2019 in C.A.No.196/2018, passed by the learned V Additional District and Sessions Judge, Coimbatore, confirming the Judgment and orders, dated 25.04.2018 in C.C.No.414/2017 passed by the learned Judicial Magistrate, Fast Track Court No.I at Magisterial Level, Coimbatore.

For Petitioner : Ms.S.Jahan Aara Begum for
Mr.J.Franklin

For Respondents : No appearance

ORDER

Challenging the Judgment and Orders, dated 25.10.2019 passed in C.A.No.196/2018 by the learned V Additional District and Sessions Judge, Coimbatore, confirming the conviction and sentence



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passed by the Judicial Magistrate, Fast track Court No.I at Magisterial Level, Coimbatore, in C.C.No.414/2017, dated 25.04.2018, 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.2,40,000/- from the complainant on 20.05.2016 promising to repay the same within 10 days. However, the accused did not pay any amount to the complainant.
- ii. After much persuasion by the complainant, the accused issued four cheques bearing numbers.937186, 937187, 937188 and 189464, all dated 30.05.2016 (Ex.P1 to Ex.P4) drawn on Indian Bank, Singanallur Branch, Coimbatore for a sum of Rs.60,000/- each.
- iii. When the complainant presented the cheques for collection on 03.06.2016 through his bankers viz., the Canara Bank, Ondipudur



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Branch, Coimbatore, the same were returned on 14.06.2016 for the reason “Funds Insufficient”, as is seen from the cheque return memos (Ex.P5 to Ex.P8).

- iv. Therefore, the complainant issued a statutory notice dated 20.06.2016 (Ex.P9) to the accused calling upon him to pay the amount due under the cheques within seven days.
- v. Though the accused received the said statutory notice, as is evidenced by the postal acknowledgement card (Ex.P10), he did not come forward to make good the payment and did not also send any reply.
- vi. Therefore, the complainant filed a private complaint before the Judicial Magistrate, Fast Track Court No.I at Magisterial Level, Coimbatore, under Section 200 Cr.P.C. against the accused in C.C.No.414/2017 for an offence punishable under section 138 of the Negotiable Instruments Act (in short 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.



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- viii. On 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.P10.
- x. Thereafter, the accused was questioned under Section 313(1)(b) of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him and he denied of having committed any offence. Though the accused did not examine any witness, marked Ex.D1 and Ex.D2 on his side.
- xi. After full contest, the learned trial court judge, vide his Judgment dated 25.04.2018, convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo Simple imprisonment for a period of six months and to pay a fine of Rs.2,40,000/- within two months from the date of the order, in default, to undergo simple imprisonment for two months.



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xii. Aggrieved over the same, the revision petitioner / accused filed an appeal in C.A.No.196/2018 before the V Additional District and Sessions Judge, Coimbatore.

xiii. The learned V Additional District and Sessions Judge, Coimbatore 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 Ms.S.Jahan Aara Begum, learned counsel for the Revision petitioner/accused. No representation for the Respondent/complainant.

5. At the outset it may be observed that the accused had not denied his signature on the cheques (Ex.P1 to Ex.P4). Once the signature is admitted, there is a presumption under Sections 118 & 139 of the N.I. Act, unless the contrary is proved by the accused.



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6. Ms.S.Jahan Aara Begum, learned counsel for the revision petitioner would contend that the cheque leaves were issued by the bank during 2006 - 2007 and this assumes importance as the complainant in his complaint had stated that the transaction between him and the Revision Petitioner took place during the year 2016. According to her, the Cheques (Ex.P1 to Ex.P4) were given only as a security for the loan amount obtained by the revision petitioner from the complainant.

7. It is seen from the records that the accused had not rebutted the presumption under Sections 118 and 139 of the N.I. Act by adducing acceptable evidence. Though it is contended that Ex.P1 to Ex.P4 cheques were issued as a security for prompt repayment of the loan amount, the same has not been substantiated. According to the counsel for the revision petitioner, the complainant had presented the invalid cheques for collection as they were issued by the bank way back in 2006-2007. This aspect was considered by the first appellate Court and the relevant paragraph is extracted hereunder :



33) *As far as the non MICR cheques are concerned, it is the duty of the accused that to prove these cheque were handed over to complainant in the year 2006 itself. But no such evidence has been let in on the side of the accused. When the cheque has been presented they have been returned for the reason Fund insufficient. The banker of the accused has not dishonoured the cheque for the reason that they were non MICR cheques or invalid cheques. The accused has not produced any material to show that using of non MICR cheques were barred during the time of the alleged transaction in the year 2016. Therefore, in the absence of any materials to that effect, the defence of the accused that the disputed cheques have issued in the year 2006 cannot be sustained.*

8. It is further seen from the Judgment of the appellate Court that the accused had adopted dilatory tactics for protracting the proceedings as far as possible. The paragraph 18 of the appellate Court Judgment is relevant in this regard which reads thus:

"18) This court gave careful consideration to the rival contentions and perused the material records. From the records of the trial court, it can be noted that the PW-1



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*was examined in chief on 02.08.2017 and Ex.P1 to Ex.P10 were marked. The accused has not come forward to cross examine the PW-1 on the same day as directed by the Hon'ble Supreme Court in **CDJ 2015 SC 115 (Vinothkumar -Vs-. State of Punjab)**, and subsequent decisions. The trial court has rightly closed the cross examination and on closure of the complainant side further evidence posted the matter for examination of the accused under Section 313 (1)(b) of Cr.P.C.. On such examination, the accused has denied the incriminating circumstances and has reported that he has two witnesses to be examined on his side. Accordingly, the trial for giving opportunity to the accused to produce defence witnesses, posted the matter for defence side evidence on 26.10.2017. On that day the accused was absent and bailable warrant issued, subsequently on 02.11.2017 petitions were filed by the accused and the bailable warrant was recalled and the matter is posted to 07.12.2017 for Defence side witnesses. Thus it can be noted that the accused was give opportunity to examine defence witnesses on 26-10-2017 and 7-12-2017. As the accused did not lead defence witness on 07.12.2017, the trial court has closed the defence side and*



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posted for arguments to 27.12.2017. Only thereafter, the accused has filed two petitions to reopen and recall PW-1 for cross examination and the same was allowed by the trial court in C.M.P.No.15280, 15281/2017 on cost of Rs.2,000/- and also directed the accused to cross examine the witness PW-1 on the next hearing date itself and posted the matter to 20.02.2018. Accordingly on 20.02.2018 though cost was paid at request the matter was adjourned for PW-1 cross examination to 28.02.2018 and on 28.02.2018 the PW-1 was cross examined by the counsel for the accused and the matter was posted for further cross examination of PW-1 ?? 16.03.2018. This shows that the trial Court has given just and reasonable opportunity to the accused to cross examine PW-1 by recalling the witness. Thereafter, on 16.03.2018 as the accused was absent and the counsel was not ready to complete the cross examination, the trial court has closed the further cross-examination of PW-1 and posted the matter for arguments on 05.4.2018. On that day both the parties were present and the matter was posted for arguments on 17.04.2018. This would show that, on 16.03.2018, despite the accused was represented by the Counsel and a petition under Section 317 Cr.P.C. is filed



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and allowed to condone the absence of the accused and permitted to be represented by Advocate, the counsel for the accused has not proceeded with the cross examination, and failed to utilise the opportunity. It is contended on the side of the accused that as the brother in law of the Advocate for the accused died, the Advocate was unable to proceed with the cross-examination on 16.03.2018. There is nothing on record to show that any representation was made to that effect and an adjournment was sought before the trial Court on that ground on that date, i.e., 16.03.2018. So, despite having second chance to further cross examine the witness on 16.03.2018, the accused has not come forward to cross examine PW-1."

9. Suffice to say that the observations made by the appellate Court are perfectly in order and there is no reason for this Court to interfere with the same. Therefore, the Criminal Revision Case is liable to be dismissed as devoid of merits.

10. In the result,



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- i. the Criminal Revision Case is dismissed.
- ii. the Judgment and orders, dated 25.10.2019 in C.A.No.196/2018, passed by the learned V Additional District and Sessions Judge, Coimbatore and the Judgment and orders, dated 25.04.2018 in C.C.No.414/2017 passed by the learned Judicial Magistrate, Fast Track Court No.I at 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 at 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.

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Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
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2.The Judicial Magistrate,
Fast track Court No.I at
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R. HEMALATHA, J.

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