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Crl.RC.No.1122 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

CORAM:

THE HON'BLE MRS.JUSTICE R.HEMALATHA

Crl.RC.No.1122 of 2020
and Crl.MP.No.7764 of 2020

K.Venkatasalam

...Petitioner

-Vs-

Lakshmi

...Respondent

Prayer:- Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C, to set aside the judgment and orders dated 27.08.2020 passed in Crl.A.No.78 of 2019 by the Principal Sessions Judge, Namakkal, confirming the judgment and orders dated 15.11.2019 passed in STC.No.21 of 2018 by the Judicial Magistrate, Tiruchengode.

For Petitioner : Mr.Ashly Varghesa for
Mr.N.Anand
For Respondent : Mr.N.K.Arulmuruganandham

ORDER

Challenging the judgment and orders dated 27.08.2020 passed in Crl.A.No.78 of 2019 by the learned Principal Sessions Judge, Namakkal,



confirming the judgment and orders dated 15.11.2019 passed in STC.No.21 of 2018 by the learned Judicial Magistrate, Tiruchengode, the present Revision Case is filed by the accused in STC.No.21 of 2018.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial court in STC.No.21 of 2018.

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

The accused borrowed a sum of Rs.5,00,000/- from the complainant on 23.12.2013 to meet his urgent business expenses and promised to repay the said amount on 10.04.2014. He also issued a post dated cheque bearing number 000008 (Ex.P1) for a sum of Rs.5,00,000/- dated 10.04.2014 drawn on City Union Bank, Rasipuram Branch, in favour of complainant. When the complainant presented the cheque for collection through his bankers, viz., Syndicate Bank, Pallipalayam Branch, on 11.04.2014 the same was returned for the reason "Funds Insufficient", as is seen from the cheque return memo (Ex.P.2). Thereafter, the complainant issued a legal notice dated 09.05.2014 (Ex.P.3) to the accused calling upon the latter to pay the amount due under the cheque within a period of 15 days from the date of receipt of the notice. Though the accused received the notice, as is



evidenced by the postal acknowledgment card (Ex.P.4) dated 10.05.2024, he neither came forward to make good the payment nor issued a reply notice.

4. Therefore, the complainant filed a private complaint under Section 200 Cr.P.C against the present revision petitioner / accused for an offence punishable under Section 138 of the Negotiable Instruments Act in STC.No.21 of 2018 before the Judicial Magistrate, Thiruchengode.

5. The learned Judicial Magistrate took cognizance of the offence and issued summons to the accused and on his appearance furnished copies of records under Section 207 Cr.P.C. When the accused was questioned with regard to the substance of accusation made against him, he pleaded not guilty. Therefore, the case was posted for trial.

6. The complainant examined himself and marked Ex.P.1 to Ex.P.4. When the accused was questioned under Section 313(i)(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 two witnesses on his side and marked Ex.D.1 to Ex.D.3.



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7. The learned Judicial Magistrate, Thiruchengode, after analyzing the oral and documentary evidence adduced on both sides, convicted the accused for an 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 compensation of Rs.5,00,000/- to the complainant within a period of one month, under Section 357 (3) of Cr.P.C, in default, to undergo Simple Imprisonment for a period of one month.

8. Aggrieved over the same, the accused filed an appeal in C.A.No.78 of 2019 before the Principal Sessions Judge, Namakkal. The learned Principal Sessions Judge, after analysing the evidence on record confirmed the conviction and sentence passed by the trial court, vide his judgment dated 27.08.2020, aggrieved over which, the present revision is filed.

9. The learned counsel for the Revision Petitioner contended that though the complainant stated that she sold her land to one Chitra and from out of the total sale consideration of Rs.10,00,000/- she lent a sum of Rs.5,00,000/- to the accused, the said Chitra was not examined. His further



contention is that when the accused had denied his signature on the cheque Ex.P.1, both the courts below convicted the accused for an offence punishable under Section 138 of the Negotiable Instruments Act. According to the counsel, the accused had lost his cheque while he was employed as a contractor under the complainant's husband and the present complaint was filed by misusing the lost cheque. She therefore, prayed for setting aside the conviction and sentence passed by both the courts below.

10. Per contra, the learned counsel appearing for the respondent contended that though the accused received the statutory notice Ex.P.3, he did not send any reply notice and thus the financial capacity of the complainant was not questioned at the earliest point of time. Though the complainant filed proof affidavit on 12.07.2016, he was cross examined on 11.09.2018 i.e. after a lapse of more than two years and during the course of cross examination, it was suggested to the complainant (P.W.1) that he did not have financial capacity to lend a sum of Rs.5,00,000/-. He relied on the decision of the Hon'ble Supreme Court in **Tedhi Singh Vs. Narayan Dass Mahant** reported in (2022) 6 SCC 735 and contended that unless a case is set up in the reply notice that the complainant did not have wherewithal to lend the amount, one cannot expect the complainant to



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initially lead evidence to show that he had the financial capacity.

11. It is also contented by the learned counsel for the respondent that mere denial of signature on the cheque is not sufficient as the accused did not take any steps to send the cheque for expert's opinion to compare the signature on the cheque along with his admitted signature. He further submitted that the accused had not lodged any police complaint with regard to the loss of cheque and did not also give due instructions to his bank to stop the payment with regard to the cheque which he had lost. Therefore, he prayed for dismissal of the present revision petition.

12. It is true that though the accused received the statutory notice (Ex.P.3), he did not choose to send any reply. No prudent man would keep quiet when a notice is issued to him stating that the cheque signed by him got dishonoured. The accused had not given any police complaint against the complainant for the reasons best known to him. The accused, as rightly pointed out by the learned counsel for the respondent, did not lodge any complaint with regard to loss of his cheque. It is also pertinent to note that mere denial of signature is not sufficient. In the instant case, the branch manager of the complainant was examined as DW.2. DW.2 in his



evidence had deposed that the cheque was not returned for the reason “signature differs” but it was returned only for the reason “insufficient funds”. In fact DW.2 had brought the second page of the 'Account Opening Form' (Ex.D.1) of the accused which contains the signature of the accused. According to DW.2, the signature found on the cheque is that of the accused. The bank also clarified that Ex.P.1 cheque was one among the cheque leaves supplied by the bank to the revision petitioner / accused in respect of the account maintained by him in City Union Bank, Rasipuram Branch. Both the courts below based on evidence, had come to the conclusion that the appellant had signed the cheque (Ex.P.1). Both the courts below had assigned cogent reasons for coming to such a conclusion and the same cannot be termed as perverse.

13. The next contention of the accused is that the complainant did not have any source to lend a sum of Rs.5,00,000/-. It is pertinent to point out that this defence is not set up by the accused by way of sending a reply notice. In the decision of the Hon'ble Supreme Court in **Tedhi Singh Vs. Narayan Dass Mahant (cited supra)**, it is held as follows:

“9. The proceedings under Section 138 of the N.I.



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Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent the Court in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross examination of the witnesses of the complainant. Ultimately, it becomes the duty of the Courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.”

14. In the instant case, the accused has questioned the financial capacity of the complainant only during the course of cross examination,



that too, after a lapse of two years. As rightly pointed out by the learned counsel appearing for the respondent, though the proof affidavit of the complainant was filed on 12.07.2016, he was cross examined on 11.09.2018. Therefore, the plea of defence that the complainant did not have financial capacity to lend a sum of Rs.5,00,000/- cannot be accepted. Accordingly, the Criminal Revision Petition stands dismissed.

15. In the result,

- i. The Criminal Revision Case is dismissed.
- ii. The judgment and orders dated 27.08.2020 made in Crl.A.No.78 of 2019 on the file of Principal Sessions Judge, Namakkal, confirming the judgment and orders dated 15.11.2019 made in STC.No.21 of 2018 on the file of the Judicial Magistrate Court, Tiruchengode, is confirmed.
- iii. The revision petitioner/accused shall surrender before the learned Judicial Magistrate, Tiruchengode, 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.



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Index : Yes/No

Speaking/Non-speaking order

To

- 1.The Judicial Magistrate Court, Tiruchengode,
2. The Principal Sessions Judge, Namakkal.
- 3.The Section Officer, Criminal Section, Madras High Court, Chennai.

R.HEMALATHA, J.

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