



Crl.R.C.No.707 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2024

CORAM

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

Crl.R.C.No.707 of 2019
and Crl.M.P.No.9929 of 2019

M.P.Raja

... Petitioner

Vs.

K.Sivakumar

... Respondent

Prayer : Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code 1973 to set aside the judgment and orders dated 16.04.2019 passed in C.A.No.74/2017 by the VI Additional Sessions Court, City Civil Court, Chennai, confirming the judgement and orders dated 22.02.2017 passed in C.C.No.4870/2013 by the Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai.

For Petitioner : Mr.N.Ravishankar Vallatharasu

For Respondent : Mr.M.Fazulul Haq
for M/s.Juris & Justia



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ORDER

Challenging the conviction and sentence passed by the learned VI Additional Sessions Judge, City Civil Court, Chennai, in C.A.No.74/2017 confirming the conviction and sentence passed by the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai in C.C.No.4870/2013, the present criminal revision case is filed.

2. The brief case of the respondent / complainant in a nutshell is as follows :

- i. The revision petitioner joined two chits floated by the respondent/complainant and bid a sum of Rs.5,00,000/- and Rs.2,00,000/- on 30.05.2008. Though he repaid a sum of Rs.5,06,100/-, did not pay the balance amount of Rs.1,93,900/-. The revision petitioner also availed a hand loan of Rs.1,00,000/- from the complainant on 16.12.2008 and repaid a sum of Rs.48,000/-. As on 30.01.2013, the revision petitioner was due and liable to pay the complainant a sum of Rs.3,84,770/- including interest.



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- ii. In order to discharge the said amount, the revision petitioner issued a cheque bearing No.994985 dated 08.02.2013 (Ex.P2) drawn on The Federal Bank Limited, North Usman Road, T.Nagar, Chennai in favour of the complainant.
- iii. When the complainant presented the said cheque for collection on 08.02.2013 through his banker, viz., South Indian Bank Limited, Mylapore Branch and the same was returned for the reason “Funds Insufficient”, as is seen from the cheque return memo (Ex.P3).
- iv. Therefore, the complainant issued a legal notice dated 16.02.2013 (Ex.P4) to the accused calling upon him to pay the amount due under the cheque within 15 days from the date of receipt of the notice.
- v. Though the accused received the said legal notice as is evidenced by the postal acknowledgement card (Ex.P5), he did not come forward to make good the payment and did not also send any reply.



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vi. Therefore, the complainant filed a private complaint before the Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai under Section 200 Cr.P.C. against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act (N.I. Act) in C.C.No.4870/2013.

vii.The learned Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. Act) and issued summons to the accused under Section 204 Cr.P.C.

viii.On the appearance of the accused, the copies of the case records were furnished 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.



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- ix. On the side of the complainant, the complainant examined himself and marked Ex.P1 to Ex.P5.
- x. Thereafter, when the accused was questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. However, he did not adduce any evidence on his side.
- xi. After full trial, the learned trial court judge, vide his judgment dated 22.02.2017, 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 the cheque amount as compensation under Section 255(2) Cr.P.C.
- xii. Aggrieved over the same, the revision petitioner / accused filed an appeal in C.A.No.74/2017 before the VI Additional Sessions



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Court, City Civil Court, Chennai. The learned VI Additional Sessions Judge, City Civil Court, Chennai 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.

3. Heard Mr.N.Ravishankar Vallatharasu, learned counsel for the revision petitioner and Mr.M.Fazulul Haq, learned counsel for the respondent.

4. It is seen from the records that though sufficient opportunities were given to the revision petitioner, he did not cross examine P.W.1, on account of which the trial court judge passed the following orders :

“The accused in this case did not deny the fact that the cheque belongs to his account. Hence as per the decision in 2010 (11) SCC 441 Rangappa Vs Sri Mohan the complainant get the beneficial presumption provided u/s.139 of N.I. Act. To decide this case further this court has to see whether the accused has



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In this case the accused was questioned u/s.313 (1) (b) Cr.P.C. on 20.04.2016 i.e. Nearly 10 months back but there after the accused never attempted to produce any defence witness and the accused never attempted to cross examine the complainant. In these circumstances, this court feels that the accused never attempted to rebut the presumption stands in favour of the complainant.

In the result, the accused is found guilty u/s.138 N.I. Act and convicted and sentenced to undergo six months simple imprisonment and directed to pay the cheque amount as compensation u/s.255(2) Cr.P.C.”

The present revision petitioner thereafter, filed an appeal in C.A.No.74/2017 before the VI Additional Sessions Judge, City Civil Court, Chennai. In the appellate court, the revision petitioner was represented through a counsel and his arguments before the appellate court was that the revision petitioner joined a chit fund and issued a cheque to the respondent/complainant as a security. Though the entire amount due under the cheque was repaid by the revision petitioner /



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accused, the respondent / complainant did not return the cheque to the revision petitioner. This argument was not accepted by the appellate court for the following reasons :

- i. The accused did not issue any reply notice nor examined himself to prove the factum of the repayment of the loan amount.
- ii. He did not rebut the presumption raised under Sections 118 & 139 of the Negotiable Instruments Act

The first appellate court confirmed the conviction and sentence passed by the trial court judge.

5. Mr.N.Ravishankar Vallatharasu, learned counsel for the revision petitioner would contend that the accused was not at all given any opportunity to cross examine P.W.1. His further contention is that the accused joined a chit company, namely, Sree Amrutha Ambika Chits Private Limited in which the respondent was one of the directors. It is also his contention that the revision petitioner/accused had issued the signed blank cheque only to the company viz., Sree Amrutha Ambika Chits Private Limited and not to the respondent / complainant.



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6. At the outset it may be observed that the accused had not denied his signature on the cheque (Ex.P2). Once the signature is admitted, there is a presumption under Sections 118 & 139 of N.I. Act unless the contrary is proved.

7. In the instant case, the accused did not issue any reply notice to the statutory notice issued by the respondent/complainant. He did not also choose to cross examine P.W.1 though he was given various opportunities.

Therefore, the trial court was right in closing the evidence. In the appellate court, the only argument advanced by the revision petitioner, as mentioned by the appellate court judge, is extracted hereunder :

“29. The only contention that was raised by the learned counsel for the appellant/ accused is that the accused had joined two chits run by the complainant company and the chits valuing Rs.5,00,000/- and Rs.2,00,000/- respectively were taken by the appellant/ accused from the respondent/ complainant on



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30.5.2008 and repaid the sum of Rs.5,06,100/- and kept a balance of Rs.1,93,900/- and also availed loan of Rs.1,00,000/- from the complainant on 16.12.2008 and the appellant/ accused repaid the sum of Rs.49,830/- and kept a balance of Rs.50,170/- and the respondent/ complainant claims that he received the cheque bearing No.994985 dated 8.2.2013 for Rs.3,84,770/- towards the repayment of the balance amount.

30. Further the accused joined a chit valuing at Rs.1,00,000/- and received the amount on 17.9.2007 and issued the two unfilled blank cheques bearing Nos.994984 and 994985 on the same day. The appellant/ accused has repaid the above amount, but though the complainant received the said amount but the complainant not returned the unfilled cheques that were given by the appellant/ accused to the respondent/ complainant, on 30.5.2008 when the appellant/ accused joined two chits in Group Name BMS 66 and BMS 67.

31. The BMS 66 amount was settled and closed on 4.4.2009.

32. The BMS 67 amount was also settled on 4.10.2008.”

Now, the learned counsel for the revision petitioner contends that he joined a chit fund floated by one Sree Amrutha Ambika Chits Private Limited and that he gave a signed blank cheque to the respondent/complainant since he was one of the Directors in the said



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Company. This was not at all raised before the appellate court and a new plea has been taken before this Court. Even assuming that the revision petitioner handed over the signed blank cheque to the respondent/complainant, section 20 of the Negotiable Instruments Act comes into operation which reads thus :

“ 20. Inchoate stamped instruments.—

Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.”

8. At the risk of repetition it has to be observed that in the instant case, the revision petitioner did not send any reply notice to the respondent/complainant though he received the statutory notice. Though



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it is alleged that he repaid the entire amount to the respondent/complainant, he did not issue any notice to the respondent/complainant to return the cheque given by him 'as security'. He did not also initiate criminal prosecution against the respondent/complainant for the reasons best known to him. If really the revision petitioner had issued a signed blank cheque to the respondent/complainant only as a security he would not have kept quiet even after repayment of entire loan amount. Both the Courts had properly analysed the evidence on record and therefore, I do not find any reason to interfere with the same.

9. In the result,

- i. The Criminal Revision Case is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.
- ii. The judgment dated 16.04.2019 passed in C.A.No.74/2017 by the VI Additional Sessions Judge, City Civil Court, Chennai and the judgement dated 22.02.2017 passed in C.C.No.4870/2013 by the Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai,



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iii. The revision petitioner/accused shall surrender before the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai, 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

Internet: Yes/No

Speaking/Non-Speaking order

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- 1.The VI Additional Sessions Court, Chennai.
- 2.The Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai.
- 3.The Section Officer, Criminal Section, Madras High Court, Chennai.

R. HEMALATHA, J.

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