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CrL.R.C.No.1463 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrL.R.C.No.1463 of 2024

M.V.Rajasekar

... Petitioner

Vs.

Arumugam

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Cr.P.C, to set aside the judgment in C.A.No.31 of 2023 dated 22.12.2023 of the Additional District and Sessions Judge, Thiruvannamalai, Thiruvannamalai District confirming the judgment of conviction made by the learned Judicial Magistrate, Fast Track Court (Magisterial Level) at Thiruvannamalai, Thiruvannamalai District in C.C.No.12 of 2019 dated 27.02.2023 and to acquit the appellant.

For Petitioner : Mr.V.C.Selvasekaran

For Respondent : Mr.E.Sathiyaraj

ORDER

The petitioner was convicted by judgment, dated 27.02.2023 in C.C.No.12 of 2019, by the Judicial Magistrate, Fast Track Court (Magisterial Level), Thiruvannamalai (Trial Court), for offence under



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Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo six months Simple Imprisonment and to pay the cheque amount with interest of Rs.6,00,000/- as compensation to the respondent in default to undergo one month Simple Imprisonment. Aggrieved over the judgment of the Trial Court, an appeal was preferred by the petitioner before the learned Additional District Judge, Thiruvannamalai (Lower Appellate Court) in Crl.A.No.31 of 2023. The learned Sessions Judge by judgment dated 22.12.2023 dismissed the appeal, confirming the judgment of the trial Court, against which the present revision.

2.The gist of the case is that the respondent is a Agriculturist and the petitioner was working as a Record Clerk at Boys Government Higher Secondary School, Kilpenathur. The petitioner is know to the respondent through another person working in the said school. The petitioner approached the respondent to provide loan for his family expenses. Believing such representation, the respondent provided loan to the petitioner on several times in the year 2017 in total Rs.17,75,000/-. When the respondent demanded the petitioner for repayment, the petitioner issued



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five cheques each for Rs.2,00,000/- each drawn on the State Bank of India, Kosamada Street Branch, Thiruvannamalai. The respondent presented two cheques bearing Nos.226204 & 226205 on 04.01.2019 for encashment, the same were returned for the reason “Funds Insufficient” and the same was informed to the respondent with the Return Memo, dated 04.01.2019. Thereafter, the respondent issued legal notice, dated 31.01.2019 to the petitioner and the same was refused. The petitioner neither issued any reply nor repaid the cheque amount. Hence, the respondent filed the complaint before the Trial Court.

3.During trial, the respondent examined himself as P.W.1 and marked Ex.P1 to Ex.P7. On the side of the petitioner, no witness examined and no documents marked. The trial Court on conclusion of trial found the petitioner guilty and convicted him as stated above.

4.This Court on 03.09.2024 & 13.09.2024 had passed the following orders:



Order, dated 03.09.2024:

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“This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of conviction imposed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level) at Thiruvannamalai in C.C.No.12 of 2019 by order dated 27.02.2023 pending disposal of the above Criminal Revision.

2.The petitioner/accused in C.C.No.12 of 2019 was convicted by the Trial Court by judgment dated 27.02.2023 for offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo six months simple imprisonment and to pay a fine of Rs.6,00,000/-, which is one and half times the cheque amount. Aggrieved against the same, the petitioner preferred an appeal before the learned Additional District and Sessions Judge, Thiruvannamalai. The learned Sessions Judge, by judgment dated 22.12.2023, confirmed the conviction and sentence of the trial Court, against which, the petitioner preferred a revision before this Court in Crl.R.C.No.1463 of 2024 along with the instant miscellaneous petition seeking suspension of sentence and bail.



3. During trial, on the side of the prosecution, the respondent examined as PW1 and marked Exs.P1 to P7. On the side of the defence no witnesses examined and no documents marked. On conclusion of trial, the Trial Court on the evidence of witnesses and the materials produced, convicted the petitioner as stated above and the Appellate Court confirmed the same.

4. The contention of the learned counsel for petitioner is that one Sampath borrowed a loan from the respondent and the said Sampath known to the petitioner. Hence, though the petitioner had taken loan earlier and discharged his entire liability, the cheque, which was given as security for the earlier loan, had been misused by the respondent and a false case lodged. According to the petitioner, he discharged his liability as regards the Cheques/Exs.P1 and P2. He further submitted that at the time of preferring an appeal, the petitioner deposited Rs.1,50,000/- before the trial Court. He further submitted that the trial Court as well as Lower Appellate Court not considered the petitioner's defence but finding signature not denied, invoking statutory presumption, convicted the petitioner. He further submitted that a civil suit in O.S.No.60 of 2019 filed by the respondent before the learned Principal District Judge, Thiruvannamalai and a



decree obtained against the petitioner on 17.03.2020. The petitioner contested the suit. In the suit, the case projected by the respondent is that the petitioner along with his brother had taken a loan, in discharge of the same cheques were issued. As per the admitted case of the respondent, the petitioner's liability would be only 50% of the cheque amount and not the entire cheque amount. He further submitted that the petitioner was arrested on the conviction warrant and now he is in prison from 13.06.2024. The petitioner is ready to deposit the amount of Rs.1,50,000/- (Rupees One lakh Fifty thousand only) and he would further take steps to negotiate with the respondent and to arrive at a settlement.

5.The learned counsel for respondent submitted that the petitioner issued two cheques for Rs.2,00,000/- each, which were marked as Exs.P1 and P2. After issuing statutory notice and following the procedure, complaint has been lodged. The petitioner's defence were dismissed by both the trial Court as well as Lower Appellate Court. The petitioner's contention of civil suit is not new. The respondent already marked the judgment and decree copy in O.S.No.60 of 2019 dated 17.03.2020 as Ex.P7. The suit is at the execution stage and the petitioner not challenged the civil suit. He further submitted that the petitioner by giving one reason or other



have been successfully dragging on the proceedings. The cheque is of the year 2018 and it is almost 6 years, the respondent is yet to see the colour of the coin. He further submitted that in the event the petitioner coming for settlement the same can be considered. He further submitted that now a Memo has been filed before the trial Court seeking return of Rs.1,50,000/-, which was already deposited by the petitioner at the time of preferring an appeal.

6.Considering the submissions made and on perusal of the materials and the specific undertaking given by the petitioner that he is ready to deposit Rs.1,50,000/- immediately and thereafter approach the respondent for settlement, finding that the petitioner is a handicapped person, he is confined in Central Prison, Vellore from 13.06.2024, the offence being a bailable offence and it is merely on technicality of dishonour of cheque, this Court is inclined to suspend the sentence imposed on the petitioner.

7.Accordingly, the substantial sentence of imprisonment imposed on the petitioner is suspended with the following conditions:

(i)The petitioner is directed to execute a personal bond before the Superintendent of Prison, Central Prison, Vellore and on execution of the same, the Superintendent of Prison,



Central Prison, Vellore shall release the petitioner forthwith;

(ii) After coming out of the prison, the petitioner shall deposit a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) to the credit of C.C.No.12 of 2019 on the file of Judicial Magistrate, Fast Track Court (Magisterial Level) at Thiruvannamalai on or before 12.09.2024;

(iii) Thereafter, the petitioner shall execute a bond for Rs.5,000/- with two sureties, each for a likesum to the satisfaction of the Judicial Magistrate, Fast Track Court (Magisterial Level) at Thiruvannamalai, within a period of 15 days thereafter.

(iv) The petitioner / accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Book to ensure their identities.

8. Accordingly, this Criminal Miscellaneous Petition is ordered. 9. This conditional order to be complied with strictly. Post the matter on 13.09.2024 'For Reporting Compliance'."

Order, dated 13.09.2024:

"This Court, by order dated 03.09.2024, suspended the sentence of the petitioner with certain conditions. One of the conditions is that the petitioner after coming out of the prison



to deposit a sum of Rs.1,50,000/- to the credit of C.C.No.12 of 2019 before the Judicial Magistrate, Fast Track Court (Magisterial Level) at Thiruvannamalai, on or before 12.09.2024.

2.The learned counsel for petitioner produced a copy of the bail bond and a receipt confirming the deposit of Rs.1,50,000/- before the Judicial Magistrate, Fast Track Court (Magisterial Level) at Thiruvannamalai on 10.09.2024. The compliance is recorded.

3.The learned counsel for respondent submitted that the respondent may be permitted to withdraw the amount of Rs.1,50,000/-, which was deposited in the credit of C.C.No.12 of 2019.

4.The learned counsel for petitioner has no objection for withdrawal of the said amount. His only request is that the withdrawal should be subject to the outcome of the above revision.

5.In view of the same, the respondent is permitted to receive the amount of Rs.1,50,000/- deposited by the petitioner by filing appropriate petition before the trial Court giving an undertaking that the withdrawal of the amount would be subject to the outcome of the revision. The trial Court on filing such petition can permit the respondent to withdraw the amount without notice to the petitioner.



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6.Post the case on 24.10.2024.”

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5.In continuation to the above orders, this Court is passing the following order.

6.The learned counsel for the respondent confines his claim to the cheque amount to Rs.4,00,000/-. During the pendency of the appeal, the petitioner deposited 20% of the cheque amount *i.e.*, Rs.1,20,000/- but in the order, dated 03.09.2024 (extracted above) in para 4, it has been wrongly mentioned as Rs.1,50,000/-. The same is hereby clarified as Rs.1,20,000/-.

7.He further submitted that apart from that 20% of the cheque amount, the petitioner deposited Rs.1,50,000/- pursuant to the order passed by this Court on 13.09.2024. In total, the petitioner deposited an amount of Rs.2,70,000/- and the petitioner has to pay the balance cheque amount of Rs.1,30,000/- as agreed.



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8.The learned counsel for the petitioner undertakes to deposit the balance cheque amount of Rs.1,30,000/- to the credit of C.C.No.12 of 2019 on the file of the Judicial Magistrate, Fast Track Court (Magisterial Level) at Thiruvannamalai or handover the demand draft or cash to the respondent directly on or before 18.11.2024.

9.In view of the subsequent development, no useful purpose will be served by keeping the revision pending. It will be in the interest of both the parties not to keep these proceedings pending, since it will affect their future life. As per Section 147 of the Negotiable Instruments Act, 1881, every offence punishable under this Act shall be compoundable.

10.Accordingly, the judgment, dated 27.02.2023 in C.C.No.12 of 2019 passed by the Trial Court and the judgment, dated 22.12.2023 in Crl.A.No.31 of 2023 passed by the Lower Appellate Court are set aside with the following conditions:



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(i)The petitioner is directed to deposit the balance cheque amount of Rs.1,30,000/- (Rupees one lakh thirty thousand only) to the credit of C.C.No.12 of 2019 on the file of the Judicial Magistrate, Fast Track Court (Magisterial Level) at Thiruvannamalai or handover demand draft or cash to the respondent directly on or before 18.11.2024.

(ii)The respondent/complainant can file a petition before the Trial Court to receive the deposited amount of Rs.1,20,000/- and Rs.1,50,000/- which are available as on date. After deposit of the balance cheque amount of Rs.1,30,000/- by the petitioner, the respondent/complainant again file appropriate petition and receive the amount. The Trial Court shall permit the respondent/complaint to withdraw the above said amount without any notice to the petitioner/accused.

11.In the result, this criminal revision case stands allowed and the petitioner is acquitted from all the charges.



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12.In the event of failure of payment of balance cheque amount of Rs.1,30,000/- by the petitioner, this criminal revision case conditional order would stand recalled and restored to the file of this Court.

24.10.2024

Index:Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation: Yes/No

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To

1.The Additional District Judge,
Thiruvannamalai.

2.The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Thiruvannamalai.

Note: Issue Order Copy on 29.10.2024.



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M.NIRMAL KUMAR, J.

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