



Crl.R.C.No.1169 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2024

CORAM

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

Crl.R.C.No.1169 of 2019

Pookunhi Koya

... Petitioner

vs.

1.The State,
Rep. by the Public Prosecutor,
Pondicherry.

2.Siddique Nelloli

... Respondents

Prayer: Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code, praying to set aside the orders passed in C.A.No.12 of 2016 dated 17.12.2018 on the file of the learned II Addl. Sessions Judge at Puducherry confirming the judgment and orders passed in S.T.R.No.1002 of 2013 by the learned Judicial Magistrate at Mahe, dated 01.03.2016.

For Petitioner	:M/s.Kingsly Solomon J
For R1	:Mr.M.V.Ramachandramurthy Additional Public Prosecutor (Pondicherry) Assisted by Mr.A.Alexander Government Advocate (Pondicherry)
For R2	:Mr.R.Krishna Prasad for M/s.Sarvabhauman Associates



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ORDER

Challenging the conviction and sentence passed by the learned II Additional Sessions Judge, Puducherry in C.A.No.12 of 2016, dated 17.12.2018, the present Criminal Revision case is filed by the accused.

2. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court.

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

- (i) The accused borrowed a sum of Rs.7,00,000/- from the complainant on 24.09.2010 and in order to discharge the said amount, he (accused) issued a Cheque (Ex.P1) bearing No.787991, dated 23.05.2013 for a sum of Rs.7,00,000/- drawn on State Bank of India, Mahe Branch.
- (ii) When the cheque was presented by the complainant for collection on 23.05.2013 through his banker viz., Federal Bank Ltd., Mahe



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Branch, the same was returned on 28.05.2013 for the reason 'funds insufficient', as is seen from the cheque return memo (Ex.P3).

- (iii) Thereafter, the complainant issued a Legal Notice on 31.05.2013 (Ex.P4) to the accused demanding the latter to pay the amount due under the Cheque within 15 days from the date of receipt of the notice.
- (iv) According to the complainant, though the accused received the said notice on 01.06.2013, as is evidenced by the postal acknowledgement card (Ex.P6), he did not come forward to make good the payment and did not also send any reply.
- (v) Therefore, the complainant filed a private complaint under Section 200 Cr.P.C., before the Judicial Magistrate, Mahe, in S.T.R.No.1002 of 2013 against the accused/revision petitioner for an offence punishable under Section 138 read with 142 of Negotiable Instruments Act, 1881.
- (vi) The learned Judicial Magistrate took cognizance of offence and issued summons to the accused under Section 204 Cr.P.C. On



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appearance of the accused, the Judicial Magistrate furnished copies of records to him 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.

(vii) The complainant examined himself as PW.1 and documents Ex.P1 to Ex.P7.

(viii) When the accused was questioned with regard to the incriminating circumstances appearing in evidence against him under Section 313 of the Code of Criminal Procedure, the accused denied of having committed any offence. However, he did not examine any witness on his side.

(ix) The learned Judicial Magistrate, after analysing the oral and documentary evidence on record, vide his judgment dated 01.03.2016 convicted the accused for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of six months and to pay a fine of Rs.5,000/- in default, to undergo simple



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imprisonment for a period of one months.

- (x) Aggrieved over the judgment and orders dated 01.03.2016 passed by the learned Trial Court Judge, the accused filed an appeal in C.A.No.12 of 2016 before the II Additional Sessions Judge, Puducherry.
- (xi) The learned Sessions Judge, after analysing the oral and documentary evidence on record, concurred with the findings of the Trial Court and confirmed the conviction and sentence, vide his judgment and orders dated 17.12.2018, aggrieved over which, the present criminal revision case is filed.

4. M/s.Kingsly Solomon, learned counsel for the revision petitioner contended that the revision petitioner did not borrow any amount from the complainant and that he took a car from the complainant on hire. Since the said car met with an accident, the cheque issued at the time of renting the car as a security was misused by the complainant for the purpose of filing the private complaint under Section 200 Cr.P.C.



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5. Per contra, Mr.R.Krishna Prasad, learned counsel appearing for the 2nd respondent/complainant contended that both the Courts below after appreciating the oral and documentary evidence adduced on both sides, had rightly come to the conclusion that the accused had committed an offence under Section 138 of the Negotiable Instruments Act, 1881 and there is no reason for this Court to interfere with the same.

6. At the outset, it may be observed that the accused admitted his signature on the Cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 and 139 of the Negotiable Instruments Act, 1881, unless the contrary is proved by the accused.

7. The specific contention of the revision petitioner is that he took a car on hire from the complainant and at that time, he issued signed cheque as a security to the complainant. This was stoutly denied by PW.1 during the course of cross examination. The accused also did not adduce any acceptable evidence to establish his contention. It is relevant to point



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out that the revision petitioner did not issue any reply notice to the statutory notice sent by the complainant.

8. In the decision in ***Bir Singh vs. Mukesh Kumar***, reported in ***(2019) 4 SCC 197***, the Hon'ble Supreme Court in Paragraph Nos.36 to 39 has held thus:-

“36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

37. The fact that the appellant-complainant might have been an Income Tax practitioner conversant with knowledge of law does not make any difference to the law relating to the dishonour of a cheque. The fact that the loan may not have been advanced by a cheque or demand draft or a receipt might not have been obtained would make no difference. In this context, it would, perhaps, not be out of



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context to note that the fact that the respondent-accused should have given or signed blank cheque to the appellant-complainant, as claimed by the respondent-accused, shows that initially there was mutual trust and faith between them.

38. In the absence of any finding that the cheque in question was not signed by the respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant-complainant, it may reasonably be presumed that the cheque was filled in by the appellant-complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of the cheque, its date or the name of the payee. The High Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act.

39. In our considered opinion, the High Court patently erred in holding that the burden was on the



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appellant-complainant to prove that he had advanced the loan and the blank signed cheque was given to him in repayment of the same. The finding of the High Court that the case of the appellant-complainant became highly doubtful or not beyond reasonable doubt is patently erroneous for the reasons discussed above.”

9. Both the Courts below by their well considered orders concurrently held that the accused committed the offence punishable under Section 138 of N.I. Act and I do not find any reason to interfere with the same. The sentence passed by both the Courts below also is not disproportionate to the offence committed by the accused.

10. In the result,

- (i) The Criminal Revision Petition stands dismissed. No costs.
- (ii) The judgment and orders dated 17.12.2018 passed by the II Additional Sessions Judge, Puducherry, in C.A.No.12 of 2016 and the judgment and orders dated 01.03.2016 passed by the Judicial Magistrate, Mahe in S.T.R.No.1002 of 2013, are confirmed.



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(iii) The revision petitioner/accused shall surrender before the learned Judicial Magistrate, Mahe, within 15 days from the date of receipt of a copy of this order, failing which, the Trial Court shall take steps to secure his presence for serving the remaining period of sentence.

12.04.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

- 1.The Judicial Magistrate,
Mahe.
- 2.The II Additional Sessions Judge,
Puducherry.
- 3.The Public Prosecutor,
Pondicherry.



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R. HEMALATHA, J.

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